

Department of Legislative Services  
Maryland General Assembly  
2020 Session

FISCAL AND POLICY NOTE  
Third Reader - Revised

Senate Bill 460

(Senator Elfreth, *et al.*)

Education, Health, and Environmental Affairs

Environment and Transportation

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State Government – Environmental and Natural Resources Ombudsman –  
Establishment (Environmental Accountability and Transparency Act)

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This bill establishes the Environmental and Natural Resources Ombudsman within the Office of the Attorney General’s (OAG) Office of the Public Access Ombudsman. The ombudsman is responsible for several tasks related to complaints that involve suspected environmental and natural resources violations. Among other things, the ombudsman must (1) maintain records of complaints; (2) consult with the Maryland Department of the Environment (MDE), the Department of Natural Resources (DNR), and the Maryland Department of Agriculture (MDA) to maintain complaint data; and (3) develop and maintain a website with related information and data on environmental and natural resources violations and complaints.

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**Fiscal Summary**

**State Effect:** Significant increase in general fund expenditures (likely by at least \$500,000 annually) beginning in FY 2021. Revenues are not directly affected, but could be affected to the extent the bill results in any change in penalties collected for various environmental and natural resources violations.

**Local Effect:** The bill does not have a direct, material effect on local finances or operations.

**Small Business Effect:** None. The bill does not directly affect small businesses.

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## Analysis

**Bill Summary:** “Suspected environmental and natural resources violation” or “suspected violation” means a suspected violation of (1) an environmental law or regulation related to managing or protecting ambient air quality or water quality or (2) a natural resources or conservation law or regulation related to managing or protecting wildlife or fishery species or populations.

The Attorney General must appoint an ombudsman that meets the requirements established under the bill. The ombudsman is a full-time State employee and is entitled to an annual salary as provided in the State budget. The ombudsman serves at the pleasure of the Attorney General.

The ombudsman must (1) receive and process complaints that involve suspected environmental and natural resources violations and notify the complainant that any complaint that does not identify a suspected environmental or natural resources violation will *not* be referred to a State or local enforcement agency; (2) refer each valid complaint received to the appropriate State or local enforcement agency; (3) maintain a record of each complaint received, as specified; (4) on at least a quarterly basis, and in consultation with MDE, DNR, and MDA, maintain and update a list of new complaints received, complaints that remain open, and complaints that have been recently closed, as specified; (5) on at least a monthly basis, and in consultation with MDE, DNR, and MDA, maintain and update a list of new legal settlements proposed by the departments that involve suspected violations, as specified; and (6) on request, provide an update to an individual who has submitted a complaint pursuant to the bill. These requirements do not apply to complaints initiated or investigated by, or inspections or enforcement actions conducted by the Natural Resources Police Force.

The ombudsman must develop and maintain a website to provide (1) a list of each complaint received by the ombudsman, MDE, DNR, and MDA for a suspected violation, as specified; (2) a list of each inspection and enforcement action conducted and initiated by MDE, DNR, and MDA during the previous 365 days under the authority of a State or federal law or regulation related to managing or protecting ambient air quality, water quality, wildlife, or fisheries, as specified; (3) an electronic link to a digital copy of each of those inspections; (4) a list of each violation discovered within the previous 365 days that MDE, DNR, or MDA has deemed “significant noncompliance,” a “high-priority violation,” or any other elevated status of concern, as specified; (5) a list of all expired and administratively continued environmental permits issued by MDE, as specified; and (6) all information on enforcement actions related to sediment and erosion control laws and regulations that is required to be posted to MDE’s website under current law. The information that is required to be posted on the ombudsman’s website must be (1) kept for

five years; (2) updated on at least a monthly basis; and (3) maintained in a database format that is searchable by category of information.

The bill expresses the intent of the General Assembly that (1) the bill enhance efficiency and reduce the burden on State agencies by taking advantage of modern technology, maximizing interagency coordination and collaboration, minimizing redundancy in agency activities, reducing staff time needed to respond to and complete Public Information Act (PIA) requests, properly vetting and routing public complaints about suspected environmental and natural resources violations, and marshalling nongovernmental resources through the facilitation and enablement of public participation and (2) government agencies responsible for implementing the bill rely on, to the maximum extent practicable, existing budgeted resources to implement the bill, as specified. Nothing in the bill must be construed to require any unit of State government to undertake additional data collection, publish any confidential information not already subject to disclosure under State law, or perform any additional redaction of information to implement the bill.

### **Current Law/Background:**

#### *Maryland Department of the Environment*

MDE's primary mission is to protect and restore the environment for the health and well-being of all Marylanders.

The mission of MDE's Air and Radiation Administration is to improve and maintain air quality and control sources of radiation to protect the health and welfare of the people and the environment of Maryland while providing for enhanced community service and economic development. The regulatory activities of the administration include (1) monitoring air quality from various sources; (2) inspecting equipment that has the potential to emit radiation or cause air pollution; (3) reducing air pollution from motor vehicles by establishing and enforcing jointly with the Motor Vehicle Administration a vehicle emissions inspection program; (4) developing plans, programs, and standards to reduce and prevent air pollution and control sources of radiation in a cost effective manner that protects public health; and (5) investigating and resolving complaints.

The mission of MDE's Water and Science Administration is to restore and maintain the quality of the State's ground and surface waters, protect wetland habitats throughout the State, and manage the utilization of Maryland's mineral and water resources. The administration manages a broad range of activities, including (1) inspecting and maintaining compliance of various facilities and activities, including industrial and municipal wastewater discharges, agriculture, construction involving water and sewerage facilities, sediment control, stormwater management, wetlands, and waterways; (2) protecting public health and water quality through permitting for surface and

groundwater discharges; (3) surveying and evaluating public water systems to ensure that they are optimized and to reduce the risk of passing pathogens to drinking water; and (4) providing technical assistance to water and wastewater utilities.

Chapters 517 and 518 of 2019 required each jurisdiction that is delegated authority to enforce sediment and erosion control laws and regulations under Subtitle 1 of Title 4 of the Environment Article to submit an annual report to MDE by January 1 of each year. The report must provide information related to specified environmental violations. MDE must post the information collected under the bill on its website. By March 1 of each year, MDE must report to the Governor and the General Assembly.

Pursuant to § 1-301(d) of the Environment Article, the Secretary of Environment, in consultation with the Attorney General, must submit an annual report on MDE's enforcement activities for the prior fiscal year to the Legislative Policy Committee. In its fiscal 2019 report, MDE noted that it provided regulatory oversight for 153,908 regulated entities, with 68,387 permits in effect in 32 different enforcement areas. MDE also reported that it (1) inspected 55,329 sites in fiscal 2019; (2) performed 171,585 inspections, audits, and spot checks; and (3) collected almost \$3 million in penalties as a result of environmental violations.

#### *Department of Natural Resources*

The mission of DNR is to lead Maryland in securing a sustainable future for our environment, society, and economy by preserving, protecting, restoring, and enhancing the State's natural resources. DNR's Fisheries Service manages commercial and recreational fishery harvests to maintain sustainable quality fisheries, enhance and restore fish and shellfish species in decline, promote ethical fishing practices, and ensure public involvement in the fishery management process. The Wildlife and Heritage Service regulates hunting, trapping, and other wildlife management activities through permitting and licensing. The Natural Resources Police is responsible for enforcing laws governing commercial fishing, aquaculture, wildlife, and boating.

**State Expenditures:** The bill includes uncodified language stating that it is the intent of the General Assembly that (1) the bill enhance efficiency and reduce the burden on State agencies, as specified, and (2) affected government agencies rely on, to the maximum extent practicable, existing budgeted resources to implement the bill. Despite the intent language, the bill still results in costs for the affected agencies. It is anticipated that general fund expenditures increase significantly, likely by at least \$500,000 annually, for OAG, MDE, and DNR to hire staff to implement the bill. The bill requires significant coordination among the three agencies and establishes several new responsibilities for the affected agencies. It is anticipated that OAG and DNR both need to hire at least two new employees to meet the bill's requirements, and MDE likely needs to hire at least three new

employees. However, the Department of Legislative Services does not have sufficient information to determine the exact number of additional staff needed to implement the bill. Accordingly, without actual experience under the bill, a reliable estimate of the increase in costs cannot be made at this time. The additional responsibilities for each of the affected agencies are discussed below.

The ombudsman and associated support staff within OAG must (1) receive, process, and track complaints; (2) coordinate with affected State agencies; (3) maintain and update a large volume of information received from the affected agencies; and (4) develop and maintain the required website and associated database.

Staff for MDE must (1) evaluate and develop a way to electronically transmit data from MDE's various databases to the ombudsman; (2) track and distribute data and complaints received from the ombudsman; (3) run monthly and quarterly database reports to provide information on the status of new and existing complaints; (4) run database reports and provide the ombudsman with information on violations, inspections, enforcement actions, and administratively extended permits; (5) respond to an anticipated increase in the number of PIA requests received; and (6) generally coordinate with the ombudsman. MDE regulates and oversees thousands of entities and deals with a high volume of complaints, inspections, and investigations each year; MDE generally does not compile this information on an ongoing basis as required under the bill.

Staff for DNR must (1) assign tracking numbers to suspected natural resources wildlife and fisheries violations; (2) update current databases; (3) coordinate with the ombudsman's office; and (4) provide the ombudsman with information on violations, inspections, and enforcement actions. DNR does not currently assign tracking numbers to all suspected natural resources wildlife and fisheries violations, which can include inquiries by phone and officer stops in the field. Thus, the bill requires DNR to change how the department currently handles suspected violations.

Because the bill focuses on suspected environmental and natural resources violations, it is assumed that the primary impact of the bill related to data collection and coordination with the ombudsman falls on MDE and DNR. It is anticipated that MDA can participate and provide information as necessary under the bill with existing budgeted resources.

**Additional Comments:** Various enforcement actions apply to violations of the State's environmental and natural resources laws. This analysis does not reflect any change in specific enforcement activities undertaken and/or penalties collected.

## Additional Information

**Prior Introductions:** None.

**Designated Cross File:** HB 614 (Delegate Lierman, *et al.*) - Environment and Transportation.

**Information Source(s):** Montgomery and Prince George's counties; Maryland Association of Counties; cities of Annapolis, Baltimore, and Bowie; Maryland Municipal League; Office of the Attorney General; Maryland Department of Agriculture; Department of Budget and Management; Maryland Department of the Environment; Department of Natural Resources; Department of Legislative Services

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