

Department of Legislative Services
 Maryland General Assembly
 2020 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 614 (Delegate Lierman, *et al.*)
 Environment and Transportation

State Government - Office of the Environmental and Natural Resources
 Ombudsman - Establishment (Environmental Accountability and Transparency
 Act)

This bill establishes the Office of the Environmental and Natural Resources Ombudsman within the Office of the Attorney General (OAG). 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.

Fiscal Summary

State Effect: General fund expenditures increase by \$695,700 in FY 2021. Future year expenditures reflect annualization and ongoing costs. 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.

(in dollars)	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	695,700	810,500	829,600	857,900	887,200
Net Effect	(\$695,700)	(\$810,500)	(\$829,600)	(\$857,900)	(\$887,200)

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

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.

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. OAG must provide office space and staff for the ombudsman and take appropriate steps to protect the autonomy and independence of the ombudsman. The ombudsman is a full-time State employee and is entitled to an annual salary as provided in the State budget.

The ombudsman must (1) receive and process complaints that involve suspected environmental and natural resources violations; (2) refer each 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 monthly 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 weekly 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) provide an update to an individual who has submitted a complaint pursuant to the bill if a State or local enforcement agency initiates an investigation or an enforcement action based on the complaint or if the ombudsman has closed a complaint.

In conjunction with MDE, DNR, and MDA, 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) 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; (4) a list of all expired and administratively continued environmental permits issued by MDE, as specified; and (5) 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 three years; (2) updated on at least a monthly basis; and (3) maintained in a database format that is searchable by category of information.

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:

Office of the Attorney General

General fund expenditures for OAG increase by \$301,948 in fiscal 2021, which accounts for the bill's October 1, 2020 effective date. This estimate reflects the cost of hiring the ombudsman, one assistant attorney general, and one part-time (50%) administrative officer to (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. It includes salaries, fringe benefits, one-time start-up costs (including the development of a website), and ongoing operating expenses.

Positions	2.5
Salaries and Fringe Benefits	\$261,737
Website Development Costs	20,000
Other Operating Expenses	<u>20,211</u>
Total FY 2021 OAG Costs	\$301,948

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses including website and database maintenance.

Maryland Department of the Environment

General fund expenditures for MDE increase by \$275,131 in fiscal 2021, which accounts for the bill's October 1, 2020 effective date. This estimate reflects the cost of hiring

five natural resource planners to (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 weekly 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) screen data sent to the ombudsman to ensure that confidential information is not transmitted; (6) respond to an anticipated increase in the number of Public Information Act (PIA) requests received; and (7) coordinate with the ombudsman and participate in required weekly and monthly meetings. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. The information and assumptions used in calculating the estimate are stated below:

- MDE regulates and oversees thousands of entities and deals with a high volume of complaints, inspections, and investigations each year;
- providing the required information to the ombudsman significantly increases MDE’s reporting and tracking responsibilities and requires MDE to develop a new team to coordinate and centralize this information; and
- the establishment of the new office and the increased visibility of MDE records results in a significant increase in PIA requests received by MDE.

Positions	5
Salaries and Fringe Benefits	\$248,300
Operating Expenses	<u>26,831</u>
Total FY 2021 MDE Costs	\$275,131

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses.

Department of Natural Resources

General fund expenditures for DNR increase by \$118,626 in fiscal 2021, which accounts for the bill’s October 1, 2020 effective date. This estimate reflects the cost of hiring two administrators, one for the Fisheries Service and one for the Wildlife and Heritage Service, to (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. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	2
Salaries and Fringe Benefits	\$107,893
Operating Expenses	<u>10,733</u>
Total FY 2021 DNR Costs	\$118,626

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses.

Maryland Department of Agriculture

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 staff and 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: SB 460 (Senator Elfreth, *et al.*) - Education, Health, and Environmental Affairs.

Information Source(s): Baltimore City; Montgomery and Prince George’s counties; Maryland Association of Counties; cities of Annapolis 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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Analysis by: Kathleen P. Kennedy

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