

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 741

(The Speaker)(By Request - Administration)

Appropriations

Maryland Environmental Service - Officers, Board of Directors, and Responsibilities - Alterations

This emergency Administration bill alters the composition, selection, and duties of the Board of Directors of the Maryland Environmental Service (MES), requires board members to observe a specified standard of care, and requires the board to annually evaluate the director of MES in accordance with specified criteria and procedures. Board members must disclose financial interests, and the board must adopt a specified conflict of interest policy by October 31, 2021. In addition, the board must obtain and review specified independent assessments and audits and make changes and recommendations as appropriate. By December 31, 2021, the board must review specified policies, practices, and procedures and report its findings and recommendations to the Governor and the General Assembly. The bill makes various technical and conforming changes.

Fiscal Summary

State Effect: Nonbudgeted expenditures increase by \$48,000 in FY 2022 and \$38,400 in FY 2023, as discussed below. Nonbudgeted revenues increase correspondingly. Minimal increase in State expenditures (multiple fund types) for State agencies that contract with MES.

| (in dollars) | FY 2022 | FY 2023 | FY 2024 | FY 2025 | FY 2026 |
|--------------|----------|----------|----------|----------|----------|
| NonBud Rev. | \$48,400 | \$38,400 | \$38,400 | \$48,400 | \$38,400 |
| GF/SF Exp. | - | - | - | - | - |
| NonBud Exp. | \$48,400 | \$38,400 | \$38,400 | \$48,400 | \$38,400 |
| Net Effect | (-) | (-) | (-) | (-) | \$0 |

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

Local Effect: Minimal increase in local expenditures for local governments that contract with MES. Local revenues are not affected.

Small Business Effect: The Administration has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment, as discussed below.

Analysis

Bill Summary/Current Law:

Designated Officers

Under current law, there are four officers of MES: a director, deputy director, treasurer, and secretary. The director is appointed by the Governor with the advice and consent of the Senate, serves at the pleasure of the board with the concurrence of the Governor, and receives compensation as determined by the board. The deputy director, secretary, and treasurer are appointed by the director with the approval of the Governor, serve at the pleasure of the director, and receive compensation as determined by the board.

Under the bill, the deputy director is removed as a designated officer of MES and a member of the board. Instead, the board may appoint a deputy director to assist the director. The deputy director serves at the pleasure of and receives compensation determined by the board. Additionally, the bill requires that the secretary and treasurer be appointed by the Governor (as opposed to the director, under current law), with the advice and consent of the Senate, and serve at the pleasure of the board (as opposed to the director, under current law).

Evaluation of the Director

Under the bill, the board must annually evaluate the director in accordance with criteria and procedures that are to be established by the board. Those criteria and procedures must also be published on the MES website.

Board Composition

Under current law, the board consists of nine voting members, including the director of MES, who serves as the board's presiding officer; the deputy director, treasurer, and secretary of MES; three public-sector members in positions responsible for water, wastewater, or solid waste management; and two private-sector members with technical, financial, development, or legal experience related to water, wastewater, or solid waste management. The public- and private-sector members of the board are appointed by the Governor with the advice and consent of the Senate and serve staggered, four-year terms.

Under the bill, the size of the board is increased from 9 to 12 members – reflecting an additional private-sector member, as specified; a member with experience or expertise related to business ethics; the State Treasurer (or designee); the Secretary of Budget and Management (or designee); and the deputy director being removed from the board (as noted above). The director remains on the board as a nonvoting member and may not serve as the chair. To the extent practicable, the membership of the board must reflect the gender, racial, ethnic, and geographic diversity of the State. The Governor must appoint the chair of the board from among the board’s members. Except for the director, an MES employee may not serve on the board. If the director is unable to attend a meeting of the board, the deputy director must attend and act in place of the director.

The members of the board who are appointed by the Governor and who are not officers of MES (hereafter referred to as “appointed members”) may not serve more than two four-year terms, plus any partial term served before the initial four-year term. The terms of public and private sector members are staggered as required by the terms provided for those members on July 1, 2021.

Staggering of Terms

Under the bill, the term of office of the public- and private-sector members (all of whom are appointed) serving on the board on or before June 30, 2021, terminates on June 30, 2021, or the date on which the Governor appoints a successor, whichever comes later. A member whose term is subject to termination may apply for reappointment by the Governor, subject to the advice and consent of the Senate. A member who is reappointed under this provision is considered appointed on the date of the member’s initial appointment, as specified.

The terms of the initial appointed members of the board expire in three phases: the terms of two members expire in 2023; two members in 2024; and three members in 2025.

Financial Disclosure and Conflict of Interest Policy

Under the bill, the Maryland Public Ethics Law is modified to expressly require members of the board to file detailed annual financial disclosure statements with the State Ethics Commission (SEC). The bill’s financial disclosure provision codifies an existing requirement; under current SEC regulations, MES board members must file detailed financial disclosure statements (as opposed to limited financial disclosure statements, which apply to specified members of boards and commissions with annual compensation below a specified threshold) in their capacity as members of the board.

The conflict of interest policy must include standards for disclosure of financial interests, board member participation in contracts with MES, and recusal from voting; a requirement

that a board member may not use the board member's position on the board for personal gain when contracting with MES; and a requirement that a board member provide an attestation of any business relationship with MES. The board must send a copy of the policy to the Governor and the Presiding Officers of the General Assembly after initial adoption and each time the policy is changed.

Standard of Care

The bill requires MES board members to observe the standard of care required of corporate directors under § 2-405.1 of the Corporations and Associations Article. Among other things, § 2-405.1 requires a corporate director to act (1) in good faith; (2) in a manner the director reasonably believes to be in the best interests of the corporation; and (3) with the care that an ordinarily prudent person in a like position would use under similar circumstances.

Annual Budget Submission

Under current law, MES must annually submit its operating and capital budget to the Department of Budget and Management (DBM) to be included for informational purposes in the State budget book.

Under the bill, the budget must be submitted in a manner required by DBM and specify the source of MES's revenues in a manner required by DBM. The bill also specifies that MES's annual budget submission must be "full and detailed."

Required Assessments

Under the bill, by December 31, 2021, and every three years thereafter, the board must obtain an assessment of the board's operations by an independent consultant or accountant. The assessment must include an evaluation of (1) the board's structure; (2) the dynamics and functioning of the board; (3) the board's role in MES's short- and long-term strategy; (4) the financial reporting process, internal audit, and internal controls; (5) the board's role in monitoring MES policies, strategies, and systems; (6) the board's role in supporting and advising MES; (7) the role of the board chair; and (8) any other issue relevant to the board's operations. The board must review each assessment and make any changes or recommendations that the board considers appropriate. Additionally, the board must submit each assessment to the Governor and the General Assembly and post a copy of each assessment on the MES website.

Required Audits

Under current law, the financial books, records, and accounts of MES must be audited at the closing of each fiscal year by independent certified public accountants selected by MES and licensed to practice in the State. The accountants may not have a direct or indirect personal interest in the fiscal affairs of MES and must be experienced and qualified in the accounting and auditing of public bodies. Annual audit reports must be prepared in accordance with generally accepted auditing principles and point out any irregularities found to exist.

Under the bill, MES must also obtain, either as a separate part of the above audit or as an individual audit, an audit that focuses on unauthorized spending, misallocated expenses, lack of conformity with State law or board policies, and other accounting errors. The board must review all required audits at a meeting of the board and make any changes or recommendations that the board considers appropriate. MES must provide copies of audit reports and any related changes or recommendations of the board to DBM and post the audit reports on its website. MES must also include audit reports and any related board changes or recommendations in its annual report to the General Assembly summarizing its activities for the preceding fiscal year.

Required Review of Specified Policies and Procedures

Under the bill, by December 31, 2021, the board must review (1) out-of-state travel; compensation, including bonuses and severance packages; conflict of interest and ethics requirements and training for employees and board members; and reimbursement of expenses; (2) make any policy or procedural changes that the board considers necessary and appropriate based on the review; and (3) report to the Governor and the General Assembly on the board's review and recommendations.

Background: MES is an instrumentality of the State and a self-supporting, not-for-profit public corporation that serves State, local, and federal agencies and the private sector through designing, planning, financing, constructing, operating, and monitoring projects for water and wastewater treatment, solid waste management, composting, recycling, dredged material management, hazardous materials cleanup, stormwater services, and renewable energy. The service operates more than 200 water and wastewater treatment facilities as well as solid waste transfer stations, material recycling facilities, the Cox Creek and Masonville dredged material placement sites, the Paul S. Sarbanes Ecosystem Restoration Project at Poplar Island, the Midshore Regional Landfill, two yard debris composting facilities, and the wood-fired cogeneration plant that supplies the Eastern Correctional Institution in Westover with electricity and steam. MES operates on a fee-for-service basis under contract.

Joint Committee on Fair Practices and State Personnel Oversight Review of Maryland Environmental Service Personnel and Board Practices

During the 2020 interim, the Joint Committee on Fair Practices and State Personnel Oversight met virtually four times to review MES personnel practices and board policies, particularly severance payment and expense reimbursements paid to a former director of MES. A summary of the joint committee's meetings and activities related to MES personnel and board practices can be found in the joint committee's 2020 interim report (pages 64-66 of the [2020 Interim Summary Reports of Committees to the Legislative Policy Committee](#)).

State Fiscal Effect: Members of the board who do not already hold public office receive per diem compensation established by the board, as provided under current law. The bill increases the size of the board to include two additional paid members. MES advises that the current per-diem compensation for paid board members is \$975. Thus, nonbudgeted expenditures for MES increase by an estimated \$23,400 annually beginning in fiscal 2022, assuming that the board meets 12 times per year and that the additional members are not appointed until July 2021. Any expense reimbursements for additional board members are assumed to be minimal and absorbable within existing budgeted resources.

In addition, the bill requires the board to obtain an independent assessment of the board's operations by December 31, 2021, and every three years thereafter. MES estimates related contractual costs at \$10,000 in fiscal 2022, fiscal 2025, and every three years thereafter. The bill also requires the board to annually obtain a specified audit, in addition to existing audit requirements; MES estimates related contractual costs at \$15,000 annually.

Thus, nonbudgeted expenditures for MES increase by a total of \$48,400 in fiscal 2022 and every three years thereafter and by \$38,400 in all other fiscal years.

Since MES is a fee-for-service entity, any costs incurred by MES resulting from the bill are ultimately borne by the entities that contract for MES services through an increase in fees. As a result, MES nonbudgeted revenues increase correspondingly. The bill is not expected to have a meaningful effect on the number and types of contracts entered into each year.

DBM, the State Treasurer's Office, and SEC all advise that they can implement the bill's requirements with existing budgeted resources.

State/Local/Small Business Effect as MES Customers: As mentioned above, since MES is a fee-for-service entity, any costs incurred by MES to implement the bill are passed on to the various State agencies, local governments, and private-sector entities (which could include small businesses), that contract for MES services. Therefore, expenditures increase

for multiple State agencies (all fund types), local governments, and any small businesses that contract with MES. However, the impact to MES customers is minimal.

Additional Comments: The bill prohibits any MES employee, other than the director, from serving on the board, and maintains the secretary and treasurer as officers and members of the board. MES advises that it currently does not have a treasurer and that the secretary serves as a member of the board but is not a regular employee. However, current law that authorizes MES to compensate the treasurer and secretary remains unchanged in the bill; to the extent that MES elects to compensate those individuals, they may become MES employees and, thus, be ineligible to serve on the board.

Additional Information,

Prior Introductions: None.

Designated Cross File: SB 575 (The President)(By Request - Administration) - Budget and Taxation and Education, Health, and Environmental Affairs.

Information Source(s): Department of Budget and Management; State Ethics Commission; Governor's Office; Maryland Environmental Service; Maryland State Treasurer's Office; Department of Legislative Services

Fiscal Note History: First Reader - February 2, 2021
an/mcr

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Maryland Environmental Service - Officers, Board of Directors, and Responsibilities - Alterations

BILL NUMBER: HB 741/SB 575

PREPARED BY: Governor's Legislative Office

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESSES

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS