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Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

Senate Bill 2

(Senator McCray, *et al.*)Budget and Taxation and Education, Health,
and Environmental AffairsAppropriations and Environment and
Transportation

Maryland Environmental Service Reform Act of 2021

This bill makes overarching changes to the governance and administration of the Maryland Environmental Service (MES), including (1) altering the composition, selection, and standards of conduct for the MES Board of Directors; (2) adding new spending and contracting restrictions and requiring independent evaluations of MES finances and board actions; (3) renaming the Director as the *Executive Director* and requiring the Executive Director to appoint a diversity officer; (4) instituting new training and required policies; (5) establishing new requirements and standards for holding board meetings; and (6) clarifying and modifying the application of specified collective bargaining provisions and procedures for MES employees, including oversight by the State Labor Relations Board (SLRB). **The bill takes effect July 1, 2021.**

Fiscal Summary

State Effect: MES nonbudgeted expenditures increase by \$146,800 in FY 2022, and nonbudgeted revenues increase correspondingly; future years reflect ongoing costs. Minimal increase in State expenditures (multiple fund types) for State agencies that contract with MES, and potential increase in general fund expenditures for SLRB beginning in FY 2022.

(in dollars)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
NonBud Rev.	\$146,800	\$126,000	\$129,500	\$133,600	\$137,700
GF Expenditure	-	-	-	-	-
GF/SF Exp.	-	-	-	-	-
NonBud Exp.	\$146,800	\$126,000	\$129,500	\$133,600	\$137,700
Net Effect	(-)	(-)	(-)	(-)	(-)

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: Minimal.

Analysis

Bill Summary/Current Law: 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.

Changes to the Composition of the Board/Board and Director Duties and Responsibilities

Under current law, there are four officers of MES: an Executive Director, a deputy director, a secretary, and a treasurer. The secretary and the treasurer (1) are appointed by the Director with the approval of the Governor (solely with regard to the qualifications for the duties of the office) and (2) serve at the pleasure of the Director and must receive compensation as determined by the board. Under the bill, the secretary and the treasurer (1) must be selected by the board from among the board members and (2) serve at the pleasure of the board and must receive compensation as may be reasonably determined by the board. The bill also renames the Director to be the *Executive Director*. Further, the bill (1) removes the deputy director, the secretary, and the treasurer from the MES board; (2) designates the Executive Director as a nonvoting member of the board; and (3) adds the State Treasurer (or designee) as a board member. Under the bill, the State Treasurer and the Executive Director are prohibited from serving as the secretary, treasurer, or chair of the board.

The bill further amends the composition of the board, changes the appointment process for the public and private sector members of the board, and prohibits the Governor from appointing an MES employee to the board. It specifies that at least one public or private

sector member must be a resident of a rural county in the State. Under current law, nonofficer board member terms are four years and are staggered as specified beginning July 1, 1993. Under the bill, the terms of all board members (other than the State Treasurer) are four years and are staggered as specified, beginning July 1, 2021. The bill specifies that the board must select a chair from among the board's members.

Under current law, the Director is the administrative head of MES *and* the presiding officer of the board. The bill removes the presiding officer responsibilities, so under the bill, the Executive Director is only the administrative head of MES. The bill requires the Executive Director, at each regular board meeting, to present a detailed and itemized accounting and explanation of all expenses incurred by or on behalf of the Executive Director and deputy director that exceed \$500 (calculated in the aggregate and from the date of the previous regular meeting through the day before the date of the regular meeting at which the expenses will be presented). The bill also requires the voting MES board members to annually evaluate the Executive Director in accordance with criteria and procedures established by the voting board members; such criteria and procedures must be published on the MES website.

Current law, in accordance with § 2-401.5 of the Corporations and Associations Article, requires, among other things, for 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. The bill requires MES board members to observe this same standard of care and to receive annual training on this standard of care.

The bill also prohibits the board from awarding a severance package to an MES executive if the executive accepts another position in the State government within one year after terminating employment with MES. Further, any former MES executive who was awarded a severance package in violation of the bill's prohibition must reimburse MES for the value of the severance package within one year after terminating employment with MES.

Finally, the bill requires the MES board to adopt a conflict of interest policy for board members by October 31, 2021. The bill specifies standards that must be included in the policy and requires the policy to prohibit a board member from using the board member's position on the board for personal gain when contracting with MES. Further, the policy must require that an MES board member provide an attestation of any business relationship with MES. The board must send a copy of the policy to the Governor, the President of the Senate, and the Speaker of the House of Delegates after the policy is initially adopted and any time a substantive change is made to the policy.

Procurement and Spending Restrictions and Submission of Budget

Current law assigns responsibility for overseeing State procurement to the Board of Public Works (BPW), but exempts MES from State procurement law (and thus from BPW oversight). For agencies subject to BPW oversight, the Code of Maryland Regulations generally requires BPW review and approval of contracts valued at \$200,000 or more. The bill requires BPW to review and approve any MES contract for the provision of requested services that has a value of \$250,000 or more unless the contract is for the provision of requested services to a unit of State or local government or for services to the federal government. In addition, the bill requires (1) MES to notify its board of any nonemergency expenditure that exceeds \$25,000 and (2) approval by the MES board for any nonemergency expenditure that exceeds \$200,000.

Current law requires MES to annually submit a budget that reflects MES's operating and capital programs to the Department of Budget and Management (DBM) for inclusion for informational purposes in the State budget book. The bill specifies that (1) MES must submit a *full and detailed* budget that reflects MES's operating and capital programs; (2) the budget be submitted in a manner required by DBM; and (3) the budget specify MES's revenue sources in a manner required by DBM.

Required Assessment and Audit

The bill requires the MES board, by December 31, 2021, and every five years thereafter, to obtain an assessment of its operations by an independent consultant or accountant. The assessment must include an evaluation of specified structures and processes, including the structure and dynamics of the board and its role in various aspects of MES's operations. The board must (1) review the assessment at one of its meetings; (2) make any changes or recommendations it considers appropriate; (3) submit the assessment to the Governor and the General Assembly; and (4) post a copy of the assessment on the MES website, as specified.

Current law requires that an audit be conducted (as soon as practical after closing the fiscal year) on MES's financial books, records, and accounts. The audit must be conducted by a licensed independent certified public accountant who may not have a personal interest either directly or indirectly in MES affairs. The bill requires that MES obtain, either as a separate part of the currently required audit or as an independent audit, an audit that focuses on unauthorized spending, misallocated expenses, lack of conformity with State law or MES board policies, and other accounting errors. The board must review the audit at a board meeting and make any changes or recommendations that it considers appropriate based on the audit. MES must (1) provide DBM with a copy of the audit and any changes or recommendations of the board based on the audit and (2) post a copy of the audit on the MES website, as specified.

New Diversity Officer, Related Updated Policies, and Required Training

The bill requires the Executive Director to appoint a diversity officer to coordinate the development and implementation of a diversity policy for MES and to assist employees in resolving grievances related to alleged violations of the diversity policy or State or federal antidiscrimination laws. The board must adopt (or readopt) policies consistent with the bill governing several items, including severance packages, bonuses, tuition and expense reimbursements, workforce diversity, whistleblower complaints, travel, and the use of MES-owned equipment and devices (such as cars, laptops, and cell phones). These policies must be periodically reviewed and revised as necessary. By December 31, 2021, and within 30 days after any policy is revised, the board must submit a report containing copies of the required policies to specified committees of the General Assembly. MES must also report annually to the General Assembly on its efforts to reduce greenhouse gas emissions consistent with goals in current law.

Under the bill, board members, the Executive Director, and the deputy director must receive annual training on ethics, harassment, diversity, and policies adopted pursuant to the bill.

Clarification of Employee Collective Bargaining Policy and Hiring Standards

Under current law (and the bill), Title 3 of the State Personnel and Pensions Article establishes statutory collective bargaining rights for a large number of State employees. State employees in general are authorized to enter into collective bargaining agreements with units of State government to establish wages, hours, pension rights, or working conditions for State employees. Current law requires MES, consistent with the provisions of Title 3 of the State Personnel and Pensions Article, to recognize and deal with an employee organization once elected as an exclusive representative, collectively bargain, and enter into the same type of agreement for MES employees.

The bill generally clarifies the authority of MES employees to enter into collective bargaining agreements and explicitly (1) adds MES employees to the list of employees to whom the State's collective bargaining provisions applies; (2) allows MES employees to enter into binding collective bargaining agreements in accordance with applicable State law; and (3) authorizes SLRB to designate one or more bargaining units for MES employees in accordance with procedures established under current law.

Further, under current law, MES is required to adopt regulations that govern MES employees and to establish a personnel system that meets specified requirements. The bill (1) requires the personnel system to be developed in accordance with the requirements of Title 3 of the State Personnel and Pensions Article and (2) requires the system to include fair and equitable procedures for the discipline or discharge of employees for just cause.

The bill also requires MES to reasonably advertise, conduct a search, and conduct a competitive interview process for each open MES position that is not assigned to a project.

New Procedures for Board Meetings

The bill establishes a number of new requirements for board meetings. Among other things, meeting agendas, meeting minutes, live video streaming, and archived video recordings of board meetings must be made available on the MES website, as specified.

Hiring Additional Counsel

Under current law and the bill, the Attorney General of Maryland is the legal advisor for MES and the board. Under current law, MES may employ additional counsel considered necessary to carry out MES's duties with the approval of the Attorney General. Under the bill, MES must also obtain board approval before hiring additional counsel.

State Fiscal Effect: BPW and the State Treasurer's Office both advise that they can implement the bill's requirements with existing budgeted resources.

Maryland Environmental Service

Nonbudgeted expenditures for MES increase by \$146,829 in fiscal 2022, which accounts for the bill's July 1, 2021 effective date. This estimate reflects the cost of hiring one new employee to act as the diversity officer and to generally implement the bill, including assisting with developing the various new policies and trainings required under the bill. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses, including costs associated with the independent assessment (estimated to be \$10,000 in fiscal 2022) and annual costs to conduct the independent audit (estimated to be \$15,000 annually beginning in fiscal 2022).

Position	1.0
Salary and Fringe Benefits	\$116,084
Independent Assessment	10,000
Independent Audit	15,000
Other Operating Expenses	<u>5,745</u>
Total FY 2022 MES Expenditures	\$146,829

Future year expenditures reflect a salary with annual increases and employee turnover and ongoing operating expenses, including ongoing costs to conduct the independent audit.

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 impact on the number and types of contracts entered into each year.

This analysis does not reflect any future reimbursements of severance packages that may occur. The bill's provision that requires former executives to reimburse MES for the value of severance packages awarded in violation of the bill does not appear to be retroactive.

MES employees have the authority to enter into collective bargaining agreements under current law. However, the bill's changes trigger a representation election and may result in an approval of representation. If MES employees approve the designation of an exclusive representative, collective bargaining may result in higher personnel costs for the agency. In that event, MES revenues and expenditures increase accordingly, but any such effect is contingent on a number of factors and thus is not reflected in this analysis.

State Labor Relations Board

The bill's addition of MES employees to the list of employees to whom the State's collective bargaining provisions apply and the authorization for SLRB to designate one or more bargaining units for MES employees has an operational impact on SLRB and likely results in an increase in general fund expenditures beginning as early as fiscal 2022. Under the bill, SLRB must act as the case manager, plan and facilitate representation elections, and process any unfair labor practice matters that are filed surrounding the activities and relationships among MES employees, unions, and MES (as the employer). MES has roughly 800 employees. The overall magnitude of any impact on expenditures for SLRB depends on several unknown factors, including (1) whether MES employees elect to bargain collectively; (2) whether SLRB designates a single or multiple bargaining units for MES employees; (3) whether an existing or new bargaining unit is designated; and (4) the number of cases alleging unfair labor practices that result based on these various factors. Thus, a precise estimate of the impact on SLRB cannot be determined at this time. SLRB notes that the bill's changes trigger a representation election and that generally, related cases are filed within the first three years after such an election.

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 minimally for multiple State agencies (all fund types), local governments, and any small businesses that contract with MES.

Additional Comments: The Joint Committee on Fair Practices and State Personnel Oversight's 2020 interim report (pages 64-66 of the [2020 Interim Summary Reports of](#)

[Committees to the Legislative Policy Committee](#)) addresses the personnel practices of MES and its board.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 2 (Delegate Korman) - Appropriations and Environment and Transportation.

Information Source(s): Baltimore City; Caroline, Montgomery, and Prince George's counties; City of Bowie; Maryland Environmental Service; Governor's Office; Maryland State Treasurer's Office; Department of Budget and Management; Maryland Department of the Environment; Department of Public Safety and Correctional Services; Board of Public Works; Maryland Department of Transportation; State Ethics Commission; State Labor Relations Board; Department of Legislative Services

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Analysis by: Kathleen P. Kennedy

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