

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 880 (Delegate Boyce)

Environment and Transportation and
Economic Matters

Environment - Impact of Actions on Climate, Labor, and Environmental Justice

This bill requires a governmental unit, before taking an “action,” to evaluate and make a determination on whether and to what extent the action may negatively affect the climate, labor and employment, “environmental justice,” and any “overburdened community.” An “action” includes the whole or a part of a rule, an order, a license, an approval, a denial sanction, or relief issued by a governmental unit. The required evaluation must include the consideration and analysis of several specified topics. Based on the evaluation, a governmental unit must issue a written general impact report and make the report publicly available. If it is determined that an action may negatively impact an overburdened community, the governmental unit must conduct further assessment, as specified, and a governmental unit may deny, condition, approve, or amend an action based on its findings. Finally, the bill requires governmental units to coordinate and seek federal funding to meet the requirements of the bill, as specified.

Fiscal Summary

State Effect: State expenditures (all/multiple fund types) increase significantly (easily by millions of dollars annually) on an ongoing basis beginning in FY 2023. The bill’s impacts on State revenues are unclear, as discussed below.

Local Effect: To the extent that the bill affects local governments, local expenditures increase significantly, as discussed below. The bill’s impacts on local revenues are unknown. **This bill may impose a mandate on a unit of local government.**

Small Business Effect: Meaningful.

Analysis

Bill Summary:

“Overburdened Community”

An “overburdened community” is (1) a low-income or moderate-income community or (2) a community of color in which residents either presently or historically have been burdened by disproportionately high numbers of environmental and public health stressors, including pollution, adverse health effects due to pollution, reduced well-being, and diminished economic success. The term includes any census tract that, according to the most recent U.S. Census Bureau survey, meets specified percentages of residents who qualify as low-income, identify as nonwhite, or have limited English proficiency. However, the Secretary of the Environment may designate an area or neighborhood that does not meet the specific criteria included in the bill’s definition of overburdened community if at least 10 residents of the area or neighborhood petition the Secretary and the Secretary determines that the area or neighborhood otherwise qualifies as an overburdened community. The Secretary is authorized to deny a petition for such a designation, as specified.

Required Evaluation, Assessments, and Related Activities

A governmental unit may not take an action unless the governmental unit has conducted the evaluations, assessments, and related activities required under the bill. The required evaluation must include the consideration and analysis of several specified topics, as follows:

- The impact of the action on the environment, including (1) the greenhouse gas emissions (GHG) and climate effects of the action, as specified; (2) whether GHG emissions and climate effects of the action are consistent with the State’s climate commitments to reduce statewide GHG emissions, as specified; (3) the effect of climate change on the action, as specified; and (4) the potential GHG emissions savings associated with using a carbon-free energy source as an alternative to a proposed energy source.
- The impact of the action on labor and employment, including whether the employers, contractors, and subcontractors associated with any project resulting from the action (1) pay the area prevailing wage for each trade, as specified; (2) offer health care and retirement benefits to employees; (3) participate in an apprenticeship program, as specified; (4) establish and execute a plan for outreach, recruitment, and retention of State residents to perform work on a project or other item associated with the project, with an aspirational goal of 25% of total work hours

performed by State residents, as specified; (5) have been in compliance with federal and State wage and hour laws for the immediately preceding three years; (6) are in good standing with all State reporting and compliance requirements; and (7) maintain all appropriate licenses in good standing.

- The impact of the action on environmental justice and any overburdened community, including the potential for (1) the deterioration of public health; (2) an increase in pollution, as specified; and (3) a negative impact on the economic well-being of residents of the State.

Based on the evaluations conducted pursuant to the bill, a governmental unit must issue a written general impact report that indicates whether and to what extent a proposed action may negatively affect the climate, labor and employment, environmental justice, or any overburdened community. The written report must be made publicly available.

If a governmental unit determines that an action may negatively affect an overburdened community, the governmental unit must conduct further assessment supported by data, studies, or other appropriate sources, including (1) an analysis of the negative impacts on the overburdened community and an analysis of the measures necessary to substantially decrease or eliminate those impacts; (2) assessing opportunities to direct proceeds, benefits, or investments which may result from an action in a manner that will benefit the overburdened community; (3) engaging in communication with the public, as specified; and (4) revising the general impact report to reflect the findings resulting from the additional assessment. A governmental unit may deny, condition, approve, or amend an action based on these findings.

Federal Funding

Governmental units must coordinate and seek federal funding, including funding available under the federal Infrastructure Investment and Jobs Act (IIJA), to meet the bill's requirements.

Current Law: Although many State agencies incorporate related considerations into the decision making process for certain actions, generally speaking, there are no broad requirements to conduct the formal evaluation and analysis process required by the bill.

“Governmental unit” is not defined by the bill or under the Environment Article (to which the bill is drafted). Governmental unit is defined under the General Provisions Article to mean a department, an agency, a commission, a board, a council, or any other body of State government that is established by law. Governmental unit is also defined several times under the State Government Article and generally includes the State and a county or municipal corporation of the State.

“Environmental justice” is defined under Title 1, Subtitle 7 the Environment Article to mean equal protection from environmental and public health hazards for all people regardless of race, income, culture, and social status. Title 1, Subtitle 7 also establishes the Commission on Environmental Justice and Sustainable Communities (CEJSC) within MDE. CEJSC is tasked with examining issues of environmental justice and sustainable communities for all Marylanders. To this end, CEJSC (1) uses data sets and mapping tools to review and analyze the environmental justice implications of current State policy, laws, and regulations; (2) assesses the adequacy of State and local laws, permits and actions, and policies to address the issue of environmental justice and sustainable communities; (3) coordinates with the Children’s Environmental Health and Protection Advisory Council, the Maryland Office of Minority Health and Health Disparities, and the Commission on Climate Change on recommendations to further environmental justice and sustainable communities; and (4) recommends options to the Governor and the General Assembly for addressing issues, concerns, or problems related to environmental justice.

IIJA was enacted in November 2021 and authorizes \$1.2 trillion in federal funding for federal aid for highways, highway safety programs, and transit programs, among other initiatives.

State Fiscal Effect: This bill affects most, if not all, State agencies and has a significant fiscal and operational impact, particularly for agencies that engage in regulatory work, such as MDE, the Maryland Department of Health (MDH), the Maryland Department of Transportation, and the Public Service Commission. However, it likely increases costs and delays projects and other agency actions even for agencies that are not generally involved in more traditional regulatory actions. Many agencies will need to hire staff as a result. Ultimately, a reliable estimate of the impact cannot be made at this time, but the overall impact on the State is significant and could easily increase State expenditure by millions of dollars each year.

For example, based on information from MDE’s fiscal 2021 Annual Enforcement and Compliance Report, between fiscal 2016 and 2021, MDE issued an average of 7,970 permits and licenses annually. As of fiscal 2021, there are 64,333 active MDE-issued permits and licenses, and 147,066 MDE-regulated sites. Further, in fiscal 2021, MDE took 15,827 enforcement actions. In addition to regulated sites, licenses, permits, and enforcement actions, MDE advises that in a given year, it typically promulgates 8 to 12 regulatory actions and 10 air quality State Implementation Plans. Therefore, MDE estimates that it takes at least 10,000 actions each year that would fall under the bill’s purview and trigger the required evaluations, assessments, written reports, and other related activities. MDE estimates that costs to implement the bill increase by \$2.3 million in fiscal 2023 to hire 35 new employees (a combination of natural resource planners, regulatory and compliance engineers, environmental compliance specialists, and

geologists); costs are anticipated to increase annually thereafter, reflecting inflation and ongoing costs.

MDH did not provide specific cost estimates, but the department estimates that it takes approximately 4,000 actions per year and anticipates that each assessment, on average, will take 116 hours of effort (which equates to an additional 464,000 work hours for MDH each year).

The Department of Legislative Services (DLS) cannot independently verify MDE or MDH's estimates at this time but concurs that both agencies (along with many others) must hire a significant number of staff and that State expenditures increase significantly beginning in fiscal 2023 to implement the bill.

Several agencies advise that the required analysis will be difficult to conduct for many actions and that in some cases, the analysis will be conducted on factors that are outside of an agency's control. Other agencies note that for a decision that requires a quick or emergency type response, the bill could potentially have a negative impact on public safety due to the requirement that agencies need to conduct the complex evaluation, analysis, and reporting prior to taking an action.

The bill's impact on State revenues is unclear and cannot be reliably estimated or described at this time. Significant project delays or the inability to respond quickly to potential funding streams, applications, *etc.*, may affect State revenues. DLS does not have sufficient information to speak to the bill's requirement for governmental units to coordinate and seek federal funding, including from IIJA, and whether available funding can be used for the purposes mandated under the bill.

Local Fiscal Effect: Since the term governmental unit is not defined under the bill and there are multiple and conflicting definitions of the term under the Maryland Code, it is unclear whether local governments are affected by the bill's requirements. However, to the extent that local governments are affected, the bill has impacts similar to those described above for State agencies. The bill has significant operational and fiscal impacts on local governments' decision making processes. Additionally, the bill likely results in significant processing delays for any State action that a local government relies on. This could apply to a broad array of actions, including permit and license applications and renewals, other project approvals, and funding requests, including for State grants and other types of funding.

Small Business Effect: Similar to the impact described above, the bill likely results in significant processing delays for any State action that small businesses rely on. On the other hand, small businesses in overburdened communities likely benefit from additional

information and consideration given to the climate, labor and employment, and environmental justice impacts of any actions taken by a governmental unit.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 931 (Senator Watson) - Rules.

Information Source(s): Department of Commerce; Harford County; Maryland Association of Counties; Maryland Department of Emergency Management; Maryland Municipal League; Alcohol and Tobacco Commission; Judiciary (Administrative Office of the Courts); University System of Maryland; Public School Construction Program; Maryland Department of Agriculture; Department of Budget and Management; Maryland Department of the Environment; Department of General Services; Maryland Department of Health; Department of Housing and Community Development; Department of Human Services; Maryland Department of Labor; Department of Natural Resources; Maryland Department of Planning; Department of Public Safety and Correctional Services; Board of Public Works; Maryland Department of Transportation; Maryland Energy Administration; Public Service Commission; National Conference of State Legislatures; Congress.gov; Department of Legislative Services

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Analysis by: Kathleen P. Kennedy

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