Department of Legislative Services

Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 416 (The Speaker, *et al.*) (By Request - Administration)
Appropriations

State Government - Quasi-Governmental Units - Oversight and Governance

This Administration bill defines specified entities as "quasi-governmental units" and establishes various requirements relating to quasi-governmental units. Among other things, the bill requires the board of directors of each quasi-governmental unit to obtain an independent assessment of the board's operations by December 31, 2023, and every five years thereafter. A quasi-governmental unit must annually submit a full and detailed budget to the Department of Budget and Management (DBM) for inclusion in the annual budget books for informational purposes, and the budget committees of the General Assembly must hold a hearing on the budget of each quasi-governmental unit at least once every two years. The Department of Legislative Services (DLS) must conduct an evaluation of each quasi-governmental unit at least once every eight years, as specified. Finally, the bill establishes the intent of the General Assembly that specified factors be weighed when considering the creation of a new quasi-governmental unit.

Fiscal Summary

State Effect: Nonbudgeted and special fund expenditures for various specified quasi-governmental units increase in fiscal 2024 and every five years thereafter for independent assessments. Nonbudgeted revenues may increase correspondingly to the extent costs are recuperated through fees. General fund expenditures for DLS potentially increase beginning in fiscal 2023 for staffing, as discussed below.

Local Effect: Local government finances and operations are not directly affected.

Small Business Effect: The Administration has determined that this bill has minimal or no impact on small business (attached). DLS concurs with this assessment.

Analysis

Bill Summary: "Quasi-governmental unit," as defined under the bill, means the following entities:

- the Bainbridge Development Corporation;
- the Canal Place Preservation and Development Authority (CPPDA);
- the Maryland Agricultural and Resource-Based Industry Development Corporation;
- the Maryland Automobile Insurance Fund;
- the Maryland Clean Energy Center;
- the Maryland Economic Development Corporation;
- the Maryland Environmental Service (MES);
- the Maryland Food Center Authority;
- the Maryland Heath and Higher Educational Facilities Authority;
- the Maryland Industrial Development Financing Authority;
- the Maryland Stadium Authority;
- the Maryland Technology Development Corporation; and
- the Northeast Maryland Waste Disposal Authority.

The bill establishes the intent of the General Assembly that when considering the creation of a new quasi-governmental unit, the following specified factors must be weighed:

- the ability of a current governmental unit or private business to perform the functions of the proposed new quasi-governmental unit; and
- the proposed role of the new quasi-governmental unit in relation to existing units of government and businesses, including whether the new quasi-governmental unit will in any way conflict with or enhance the operations of a current unit of government or business.

Required Performance Appraisal

The bill requires the voting members of the board of directors of each quasi-governmental unit to conduct an annual performance appraisal of the head of the quasi-governmental unit.

Required Budget Submission

A quasi-governmental unit must annually submit a full and detailed budget reflecting the operating and capital program of the unit to DBM, which must include each budget for information purposes in the annual State budget books. The required budget must be submitted and specify the source of the quasi-governmental unit's revenues in the manner required by DBM.

The budget committees of the General Assembly generally must hold a hearing on the budget of each quasi-governmental unit at least once every two years and may hold a hearing on the budget of a quasi-governmental unit annually. However, a budget committee may vote not to hold a hearing on the budget of a specific quasi-governmental unit in a required year, in which case the committee must hold the hearing in the immediately following year.

Required Assessment of Board Operations

By December 31, 2023, and every five years thereafter, the board of directors of a quasi-governmental unit must obtain an assessment of the board's operations by an independent consultant or accountant. The assessment must include an evaluation of:

- the structure, dynamics, and functioning of the board, as specified;
- the board's role in the short- and long-term strategy of the quasi-governmental unit;
- the financial reporting process, internal audits, and internal controls of the quasi-governmental unit;
- the board's role in monitoring the policies, strategies, and systems of the quasi-governmental unit;
- the board's role in supporting and advising the quasi-governmental unit;
- the role of the chair of the board; and
- 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 based on the assessment. In addition, the board must submit each assessment to the Governor and the General Assembly, and the quasi-governmental unit must post a copy of each assessment on its website, including a link to a copy of the most recent assessment on the homepage of the website.

Required Evaluations of Quasi-governmental Units

DLS must conduct an evaluation of each quasi-governmental unit and the statutes related to each quasi-governmental unit at least once every eight years in accordance with the schedule determined by the Executive Director of DLS. For purposes of the bill, "evaluation" means the process of legislative review of a governmental activity or quasi-governmental unit used to determine:

- whether the quasi-governmental unit is fulfilling the purpose as provided in its implementing legislation, including whether its duties or functions differ from this legislation;
- whether another governmental unit or private business is better able to perform the functions of the quasi-governmental unit; and
- what, if any, legislative or nonlegislative changes should be recommended to the General Assembly to improve the operations of the quasi-governmental unit.

During an evaluation, the quasi-governmental unit under evaluation must promptly provide any information requested by DLS and otherwise cooperate with DLS to carry out the bill's requirements. As necessary, requested information may be provided in a format that protects the confidentiality of individuals. DLS must follow procedures to maintain the confidentiality of any information, documents, or proceedings obtained or observed in the course of carrying out the bill's requirements.

On completion of an evaluation of a quasi-governmental unit, DLS must submit an evaluation report, including draft legislation to implement any recommended statutory changes, to the committees of the General Assembly that routinely handle the policy issues and legislation related to a specific governmental activity or quasi-governmental unit subject to review. The evaluation report must address the quasi-governmental unit's efficiency, effectiveness, role in protecting consumers, sufficiency of resources, and adherence to and accomplishment of legislative objectives.

The initial evaluation reports of quasi-governmental units as required under the bill must be submitted by December 31 of specified years, with the first two evaluation reports due by December 31, 2023, and the last of the initial reports due by December 31, 2030.

Current Law/Background: In December 2020, Governor Hogan issued Executive Order 01.01.2020.05 establishing the State Transparency and Accountability Reform Commission to review and investigate the operations and structures of various specified "quasi-governmental agencies." The executive order charged the commission with studying and making recommendations about:

- term limits for members or directors;
- employees serving as members or directors;
- requirements for financial and conflict-of-interest disclosures;
- standards to maintain and improve the efficiency and effectiveness of governmental operations and for specified ethical responsibilities;

- instruction on ethics;
- independent financial and compliance audits;
- preparation of budgets;
- periodic reports on activities, findings, accomplishments, business transactions, and financial condition;
- the balance between independence and accountability necessary for efficient or effective operations; and
- any other matter the commission considered appropriate and relevant.

The commission met several times throughout calendar 2021 and issued its final report on December 1, 2021. The bill implements various recommendations of the commission.

Among other things, the report recommends that each governing board of a quasi-governmental agency should undergo a routine and independent board assessment at least every five years, similar to the requirement enacted under the Maryland Environmental Service Reform Act of 2021 (Chapter 72). Among other things, the Act requires MES to obtain an assessment of its operations by an independent consultant or accountant every five years, beginning in 2021. 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.

In addition, the report recommends that each quasi-governmental agency undergo a periodic review conducted by the legislature, at least once every eight years, similar to the sunset review process under the Maryland Program Evaluation Act (MPEA). Under MPEA, over 60 regulatory entities and activities are subject to review by DLS, as directed by the Legislative Policy Committee, the Joint Audit and Evaluation Committee, the Executive Director of DLS, the Director of the DLS Office of Policy Analysis, or the Director of the DLS Office of Program Evaluation and Government Accountability (OPEGA). Entities subject to MPEA are generally also subject to termination unless reauthorized periodically through legislation. Prior to the enactment of Chapters 510 and 511 of 2019 (which, among other things, established OPEGA as a new office within DLS), MPEA required DLS to periodically conduct evaluations of these entities in accordance with a statutorily based schedule; the Acts eliminated the mandated evaluations and instead authorized such evaluations to be conducted, as directed, in accordance with a work plan developed by DLS.

State/Quasi-governmental Unit Fiscal Effect:

Quasi-governmental Units

As discussed above, the bill establishes various requirements that apply to quasi-governmental units, as specified in the bill. Quasi-governmental units generally indicate that they can comply with the bill's budget submission requirements, attend biennial budget hearings, and cooperate with DLS in the conducting of periodic performance evaluations with existing budgeted resources. It is also assumed that the governing boards of quasi-governmental units can conduct annual performance appraisals of the units' heads with existing budgeted resources. In some cases, these requirements reflect existing practices or requirements for specified quasi-governmental units.

The bill further requires that by December 31, 2023, and every five years thereafter, the governing board of each quasi-governmental unit obtain an assessment of the board's operations by an independent consultant or accountant. Thus, nonbudgeted expenditures (and, in the instance of CPPDA, special fund expenditures) increase in fiscal 2024 and every five years thereafter in order to obtain the required independent assessment. Costs are likely to vary depending on the precise scope of the evaluations but likely range from $15,000 to as much as $75,000. As many of the affected entities operate on a fee-for-service model, nonbudgeted revenues for various affected entities increase to the extent that these increased expenses are recuperated through fees.

As noted above, Chapter 72 of 2021 requires MES to obtain a similar assessment of its operations by an independent consultant or accountant every five years, beginning in 2021. It is unclear whether MES can comply with the bill's requirement by accelerating its next scheduled assessment (from 2026 to 2023) and subsequent required assessments under Chapter 72, or whether MES must obtain more frequent assessments of board operations as a result of the bill. To the extent that MES may comply with both the bill's requirement and the requirement of Chapter 72 by accelerating its next scheduled assessment, nonbudgeted expenditures for MES increase in fiscal 2024 (and every five years thereafter) and decrease correspondingly in fiscal 2027 (and every five years thereafter). MES advises that the initial assessment conducted in accordance with Chapter 72 cost approximately $30,000.

Department of Legislative Services

The bill requires DLS to conduct a specified evaluation of each of the 13 specified quasi-governmental units once every eight years in accordance with a schedule determined by the Executive Director of DLS. The initial evaluation reports must be completed on a specified staggered scheduled, with the first two evaluation reports due by

December 31, 2023, and the last of the initial reports due by December 31, 2030. Thus, it is assumed that DLS must conduct one to two such evaluations annually under the bill.

Under the bill, DLS has discretion to determine which unit within the department is responsible for conducting the required evaluations. Regardless, the bill's requirement likely affects DLS's ability to conduct other reviews as may be directed or requested by the General Assembly. To the extent that the required evaluations cannot be absorbed by existing DLS staff, general fund expenditures for DLS increase as early as fiscal 2023 in order for DLS to hire additional staff and/or obtain contractual assistance.

The bill also requires the General Assembly to hold budget hearings on each of the 13 quasi-governmental units at least every two years, or six to seven hearings per year. DLS normally prepares detailed written analyses for each budget hearing, so DLS must prepare six to seven additional analyses per year. To the extent that DLS cannot absorb this additional workload with existing staff, one additional budget analyst is needed. Otherwise, the General Assembly can conduct hearings for quasi-governmental units as required under the bill with existing budgeted resources.

Department of Budget and Management

DBM can include the budgets submitted by quasi-governmental units in the annual State budget books, as required under the bill, using existing budgeted resources.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 399 (The President, *et al.*) (By Request - Administration) - Education, Health, and Environmental Affairs.

Information Source(s): TEDCO; Maryland Environmental Service; Department of Commerce; Northeast Maryland Waste Disposal Authority; Maryland Department of Agriculture; Department of Budget and Management; Maryland Energy Administration; Maryland Food Center Authority; Maryland Automobile Insurance Fund; Maryland Clean Energy Center; Maryland Agricultural Resource-Based Development Corporation; Department of Legislative Services

Fiscal Note History: First Reader - February 27, 2022
rh/mcr

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: **State Government - Quasi-Governmental Units - Oversight and Governance**

BILL NUMBER: **HB 416**

PREPARED BY: Governor's Legislative Office

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

_X__ WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

___ WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS