

HOUSE BILL 161

M1, M5, M3

3lr0627

By: **Delegates Korman and Szeliga**

Introduced and read first time: January 16, 2023

Assigned to: Environment and Transportation

A BILL ENTITLED

1 AN ACT concerning

2 **Northeast Maryland Waste Disposal Authority – Evaluation and Termination of**
3 **Bond Authority**
4 **(Northeast Maryland Waste Disposal Authority Sunset Act)**

5 FOR the purpose of prohibiting the Northeast Maryland Waste Disposal Authority from
6 issuing bonds beginning on a certain date; requiring the Department of Legislative
7 Services to conduct an evaluation of the Northeast Maryland Waste Disposal
8 Authority; requiring the Maryland Environmental Service and the Maryland Clean
9 Energy Center to review certain aspects of the Northeast Maryland Waste Disposal
10 Authority and analyze whether the Maryland Environmental Service or the
11 Maryland Clean Energy Center is able to assume those aspects; requiring the
12 Northeast Maryland Waste Disposal Authority to provide any information the
13 Department of Legislative Services, the Maryland Environmental Service, and the
14 Maryland Clean Energy Center request; requiring the Department of Legislative
15 Services, the Maryland Environmental Service, and the Maryland Clean Energy
16 Center to follow procedures to maintain the confidentiality of certain information,
17 documents, and proceedings; and generally relating to the Northeast Maryland
18 Waste Disposal Authority.

19 BY repealing and reenacting, with amendments,
20 Article – Natural Resources
21 Section 3–905(a) and 3–907(a)
22 Annotated Code of Maryland
23 (2018 Replacement Volume and 2022 Supplement)

24 BY adding to
25 Article – Natural Resources
26 Section 3–907.1
27 Annotated Code of Maryland
28 (2018 Replacement Volume and 2022 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Preamble

WHEREAS, The Northeast Maryland Waste Disposal Authority was created by the General Assembly in 1980 as a regional coordinating agency and financing vehicle to assist participating political subdivisions of the State, other public entities, and the private sector of the economy in the provision of adequate waste disposal facilities, including facilities that provide for energy generation and resource recovery and facilities that generate steam, electricity, or other forms of energy from fuels derived from or otherwise related to waste disposal facilities; and

WHEREAS, The Maryland Environmental Service was created by the General Assembly in 1970 to provide dependable, effective, and efficient water supply and purification and disposal of liquid and solid wastes, encourage reductions in the amount of waste generated and discharged to the environment, encourage the generation of energy and the recovery of useable resources from waste to the extent practicable, promote the conservation of energy use, enable and provide for the production of energy from solid wastes and renewable and other sources, encourage private sector participation in environmental protection, and serve its political subdivisions and economic interests; and

WHEREAS, The Maryland Clean Energy Center was created by the General Assembly in 2008 to encourage the development of clean energy industries in the State, encourage the deployment of clean energy technologies in the State, help attract and retain business activity and commerce in clean energy technology in the State, promote economic development, and promote the health, safety, and welfare of residents of the State; and

WHEREAS, The Northeast Maryland Waste Disposal Authority developed waste-to-energy facilities in Harford County, Montgomery County, and Baltimore City; and

WHEREAS, The waste-to-energy facility in Harford County closed in 2016; and

WHEREAS, The local government in Montgomery County stated an intention to close the waste-to-energy facility in the county, the contract for which terminates in April 2026; and

WHEREAS, Baltimore City's contract to send trash to the waste-to-energy facility in Baltimore City terminates in December 2031, and Baltimore County's contract to send trash to the waste-to-energy facility in Baltimore City terminates in September 2026; and

WHEREAS, On formation of the Northeast Maryland Waste Disposal Authority in 1980, the General Assembly contemplated that, under the appropriate conditions, the Northeast Maryland Waste Disposal Authority could merge into the Maryland Environmental Service under § 3-924 of the Natural Resources Article; and

WHEREAS, In its December 2021 report, the State Transparency and Accountability Reform Commission recommended that each agency the Commission reviewed, including the Northeast Maryland Waste Disposal Authority, should undergo a review at least once

1 every 8 years, conducted by the legislature and similar to a sunset review, to assess the
2 agency's statutory compliance with its mission and vision; and

3 WHEREAS, A 2017 report, Written Report of George D. Thurston Regarding the
4 Public Health Impacts of Air Emissions From the Wheelabrator Facility, found that air
5 pollution from the Baltimore Refuse Energy Systems Company waste-to-energy facility
6 causes \$55 million in health damages annually for the region; and

7 WHEREAS, An analysis by the Environmental Integrity Project demonstrates that
8 Maryland's two remaining waste-to-energy facilities emit significantly more mercury and
9 nitrogen oxides per unit of energy than the State's remaining coal plants; and

10 WHEREAS, In Appendix E of its December 2021 report, the State Transparency and
11 Accountability Reform Commission states, "It was brought to the Commission's attention
12 that the Northeast Maryland Waste Disposal Authority (NMWDA) has a provision within
13 its statute (Natural Resources Section 3-924) that allows them to merge within the
14 Maryland Environmental Services (MES). Given that, to the Commission's knowledge,
15 NMWDA does not have any outstanding bonds, it may be appropriate to consolidate them
16 into MES since their work overlaps. This could help eliminate any redundancies and
17 integrate the efforts of both agencies to better serve the state."; now, therefore,

18 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
19 That the Laws of Maryland read as follows:

20 **Article – Natural Resources**

21 3-905.

22 (a) [The] **EXCEPT AS PROVIDED IN § 3-907.1 OF THIS SUBTITLE, THE**
23 Authority is granted and has and may exercise all powers necessary for carrying out the
24 purposes of this subtitle, including but not limited to, the following rights and powers:

25 (1) To have perpetual existence as a corporation;

26 (2) To adopt bylaws, rules, regulations, policies, and procedures for the
27 regulation of its affairs and the conduct of its business;

28 (3) To adopt an official seal and alter the same at pleasure;

29 (4) To maintain an office or offices at such place or places as it may
30 designate;

31 (5) To appoint officers, agents and employees, and to prescribe their duties
32 and to fix their compensation as set forth in this subtitle;

33 (6) To sue and be sued in its own name;

1 (7) To acquire, construct, reconstruct, rehabilitate, improve, maintain,
2 equip, lease (as lessor or as lessee), repair, and operate projects within or without the State
3 of Maryland and to establish reasonable rules and regulations relating to any project;

4 (8) To acquire, purchase, hold, lease as lessee, and use any franchise,
5 patent or license and any property (real, personal or mixed or tangible or intangible), or
6 any interest therein, necessary or convenient for carrying out the purposes of the Authority;

7 (9) To sell, lease as lessor, transfer, and dispose of any property or interest
8 therein at any time acquired by it;

9 (10) To acquire, either directly or by or through any person or political
10 subdivision, by purchase or by gift or devise such lands, structures, property (real or
11 personal) rights, rights-of-way, franchises, easements and other interests in lands,
12 including lands lying under water and riparian rights which are located within or without
13 the State as it may deem necessary or convenient for the construction or operation of a
14 project, upon such terms and at such prices as may be considered by it to be reasonable and
15 can be agreed upon by it and the owner thereof, and to take title thereto in the name of the
16 Authority;

17 (11) To borrow money and to issue bonds for the purpose of paying all or any
18 part of the cost of any one or more projects or for any other corporate purpose of the
19 Authority; to secure the payment of such borrowing or any part thereof by pledge of or
20 mortgage or deed of trust on all or any part of its properties or revenues; to combine projects
21 for financing or operating purposes; to make agreements with or for the benefit of the
22 purchasers or holders of bonds or with others in connection with the issuance of any such
23 bonds, whether issued or to be issued, as the Authority may deem advisable; and in general
24 to provide for the security of such bonds and the rights of the holders thereof;

25 (12) To take and hold title to any project which may be transferred to the
26 Authority, and to assume jurisdiction over and provide for the maintenance and operation
27 of said project, all on such terms as may be mutually agreed upon between the Authority
28 and the transferor. The Authority may contract with any subdivision to assume the
29 payment of the principal of and interest on obligations or indebtedness of such subdivision
30 incurred in connection with any project and may undertake to operate any project in such
31 a manner as to provide for the payment of all outstanding obligations or indebtedness
32 applicable to such project and the interest thereon and to transfer to the appropriate
33 subdivision an amount equal to the debt service payments prior to the applicable payment
34 date;

35 (13) To fix and revise from time to time and to collect rates, rentals, fees,
36 and charges for the use of or for services and facilities provided or made available by the
37 Authority;

38 (14) To make and enter into contracts with the federal or any state
39 government (or any agency, instrumentality or subdivision thereof) or with any subdivision
40 or person within or without the State of Maryland providing for or relating to the

1 acquisition, construction, management, operation, and maintenance of any project or the
2 furnishing of services by or to any project or in connection with the services of any project
3 owned, operated, or controlled by the other contracting party; such contracts may make
4 provision for:

5 (i) The payment by the other contracting party to the Authority of a
6 fixed amount for the collection, processing, or disposal of a stated amount of waste (whether
7 or not the stated amount of waste is collected, processed or disposed of), or of all or any
8 portion of the operating expenses of one or more projects;

9 (ii) The utilization by the other contracting party of one or more
10 projects for the processing or disposal of all or any portion of waste over which such party
11 has control;

12 (iii) The collection by the other contracting party or its agents or by
13 agents of the Authority of fees, rates or charges for the services and facilities rendered to a
14 subdivision or the inhabitants thereof, and for the enforcement of delinquent charges for
15 such services and facilities; or

16 (iv) The abandonment or restriction or prohibition of the construction
17 or operation of competing facilities. The provisions of any such contract with a subdivision
18 shall be deemed to be for the benefit of bondholders as designated by the Authority and
19 may be made irrevocable so long as any bonds of the Authority secured by such contract
20 shall be outstanding;

21 (15) To make and enter into all contracts or agreements which the Authority
22 determines are necessary or incidental to the performance of its duties and to the execution
23 of the purposes of and the powers granted by this subtitle, including (without limitation)
24 contracts relating to:

25 (i) The use or management by the other contracting party of any
26 project or the services therefrom or the facilities thereof;

27 (ii) The use by the Authority of the services or facilities of any project
28 owned, leased, operated or controlled by the other contracting party;

29 (iii) The sale of any fuel, steam, electricity, energy, or other material
30 or resource derived from the operation of any project;

31 (iv) The acceptance, processing and disposal of wastes by one or more
32 projects; or

33 (v) The employment or retention of consulting and other engineers,
34 superintendents, financial advisors, attorneys, accountants, and such other employees,
35 advisors or agents as in the judgment of the Authority may be deemed necessary or
36 desirable;

1 (16) To enter with the permission of the owner upon lands, waters, or
2 premises for the purpose of making surveys, soundings, borings, and examinations to
3 accomplish any purpose authorized by this subtitle, the Authority being liable for any
4 actual damage done;

5 (17) To make application for, receive and accept from the federal or any state
6 government (or any agency, instrumentality, or subdivision thereof) or from any person
7 grants relating to the Authority or any project, including (without limitation) grants for or
8 in aid of the planning, financing, construction, acquisition, maintenance, or operation of
9 any project; to receive and accept aid or contributions from any source, whether in the form
10 of money or property, labor, or other things of value; and to participate in any price support
11 program, loan program or other program of the federal or State government relating to
12 waste disposal, resource recovery or energy generation;

13 (18) To make rules and regulations pertaining to the Authority and projects,
14 which rules and regulations may (without limitation) exclude or require preconditioning of
15 any waste that might otherwise be harmful to the project or its efficient operation or
16 endanger the health or safety of workers or others;

17 (19) To enter into agreements with the Maryland Environmental Service
18 providing for the assumption by the Maryland Environmental Service of such activities of
19 the Authority as the Authority may deem necessary or desirable to effectuate its purposes,
20 including agreements relating to the exchange of information between the Authority and
21 the Maryland Environmental Service, the sharing of planning resources, the provision by
22 the Maryland Environmental Service of personnel, consulting services and technical
23 assistance to the Authority, and the acquisition, construction, supervision, operation or
24 maintenance of one or more projects by the Maryland Environmental Service; and

25 (20) To do all things necessary to carry out its purposes and for the exercise
26 of the powers granted in this subtitle.

27 3-907.

28 (a) **[The] EXCEPT AS PROVIDED IN § 3-907.1 OF THIS SUBTITLE, THE**
29 Authority is hereby authorized and empowered, by resolution, to issue bonds for the
30 purpose of financing the cost of one or more projects or for any other corporate purpose.
31 Except as may otherwise be expressly provided by the Authority, every issue of its bonds
32 shall be general obligations of the Authority payable from any revenues or money of the
33 Authority available therefor and not otherwise pledged, subject only to any agreements
34 with holders of particular bonds pledging any particular revenues or money and to any
35 agreements with any persons or subdivisions. The Authority may issue its bonds without
36 obtaining the consent of any board, agency, department or unit of the State, and without
37 any other proceedings or the happening of any conditions or things other than those
38 specifically required hereunder. The Authority and the Maryland Environmental Service
39 may enter into agreements providing for (i) the financing by the issuance of bonds of the
40 Maryland Environmental Service of projects provided for any subdivision by the Authority

1 or (ii) the financing by the issuance of bonds of the Authority of projects provided for any
2 subdivision by the Maryland Environmental Service.

3 **3-907.1.**

4 (A) **BEGINNING JUNE 1, 2023, THE AUTHORITY MAY NOT ISSUE BONDS.**

5 (B) **SUBSECTION (A) OF THIS SECTION DOES NOT IMPAIR THE AUTHORITY'S**
6 **POWERS AND AUTHORITY REGARDING:**

7 (1) **ANY BONDS THAT, AS OF JUNE 1, 2023, ARE OUTSTANDING AND**
8 **UNPAID; OR**

9 (2) **ANY CONTRACTS THAT, AS OF JUNE 1, 2023, RELY ON THE**
10 **AUTHORITY'S BONDING AUTHORITY.**

11 SECTION 2. AND BE IT FURTHER ENACTED, That:

12 (a) The Department of Legislative Services shall conduct an evaluation of the
13 Northeast Maryland Waste Disposal Authority, including a review of:

14 (1) the statutes related to the Northeast Maryland Waste Disposal
15 Authority;

16 (2) whether the Northeast Maryland Waste Disposal Authority is fulfilling
17 its statutory purpose, including whether its duties or functions in practice differ from its
18 duties and functions specified in statute;

19 (3) whether continuation of the Northeast Maryland Waste Disposal
20 Authority is necessary for the public interest, including whether the Northeast Maryland
21 Waste Disposal Authority's statutory purpose serves the needs of the State;

22 (4) whether the systems for procurements and awarding of contracts by the
23 Northeast Maryland Waste Disposal Authority have created any conflicts of interest;

24 (5) whether the operations of the Northeast Maryland Waste Disposal
25 Authority have led to a reduction in waste sent to incinerators and landfills in its member
26 jurisdictions;

27 (6) whether the Northeast Maryland Waste Disposal Authority has
28 contributed to its member jurisdictions attaining a higher recycling rate under the
29 Maryland Recycling Act than the recycling rate for nonmember jurisdictions;

30 (7) whether the operations of the Northeast Maryland Waste Disposal
31 Authority have led to cost savings for the State and, relative to costs for nonmember

1 jurisdictions, the member jurisdictions of the Northeast Maryland Waste Disposal
2 Authority;

3 (8) what impact discontinuation of the Northeast Maryland Waste
4 Disposal Authority would have on:

5 (i) the State Retirement and Pension System; and

6 (ii) the retirement and pension of Northeast Maryland Waste
7 Disposal Authority employees;

8 (9) how to dispose of cash reserves and other holdings of the Northeast
9 Maryland Waste Disposal Authority if the Northeast Maryland Waste Disposal Authority
10 is discontinued;

11 (10) whether another entity, such as the Maryland Environmental Service
12 or the Maryland Clean Energy Center, is better able to perform the duties and functions of
13 the Northeast Maryland Waste Disposal Authority; and

14 (11) what, if any, legislative or nonlegislative changes should be
15 recommended to the General Assembly to:

16 (i) improve the operations of the Northeast Maryland Waste
17 Disposal Authority; and

18 (ii) merge the Northeast Maryland Waste Disposal Authority into
19 the Maryland Environmental Service or other appropriate entity.

20 (b) (1) On or before December 1, 2024, the Department of Legislative Services
21 shall submit a report on the evaluation conducted under subsection (a) of this section to, in
22 accordance with § 2–1257 of the State Government Article, the Senate Education, Health,
23 and Environmental Affairs Committee, the Senate Budget and Taxation Committee, the
24 House Environment and Transportation Committee, the House Ways and Means
25 Committee, and the House Appropriations Committee.

26 (2) The report submitted under paragraph (1) of this subsection shall:

27 (i) address the Northeast Maryland Waste Disposal Authority's:

28 1. efficiency;

29 2. effectiveness, including the ability of the Northeast
30 Maryland Waste Disposal Authority to serve the modern waste disposal needs of member
31 jurisdictions;

32 3. technical abilities to implement and sustain zero-waste
33 methodologies that conserve all resources:

1 A. through responsible production, consumption, reuse, and
2 recovery of products, packaging, and materials; and

3 B. without burning the resources or discharging to land,
4 water, or air pollutants that threaten the environment or human health;

5 4. sufficiency of resources;

6 5. governance;

7 6. adherence to and accomplishment of legislative objectives;

8 and

9 7. statutory purpose, including whether the statutory
10 purpose is appropriate and sufficient to help Maryland achieve the waste diversion and
11 recycling goals in the Maryland Recycling Act and the policies and goals established in
12 Executive Order 01.01.2017.13, Waste Reduction and Resource Recovery Plan for
13 Maryland; and

14 (ii) include draft legislation to:

15 1. merge the Northeast Maryland Waste Disposal Authority
16 into the Maryland Environmental Service; and

17 2. implement any other statutory changes recommended in
18 the report.

19 (c) (1) During the evaluation conducted under subsection (a) of this section,
20 the Northeast Maryland Waste Disposal Authority shall:

21 (i) promptly provide any information that the Department of
22 Legislative Services requests; and

23 (ii) otherwise cooperate with the Department of Legislative Services
24 to carry out the requirements of this section.

25 (2) Information requested under paragraph (1)(i) of this subsection may be
26 provided in a format that protects the confidentiality of individuals as necessary.

27 (d) The Department of Legislative Services shall follow procedures to maintain
28 the confidentiality of any information, documents, or proceedings obtained or observed in
29 the course of carrying out the requirements under this section.

30 SECTION 3. AND BE IT FURTHER ENACTED, That:

1 (a) The Maryland Environmental Service and the Maryland Clean Energy Center
2 shall:

3 (1) review the functions, current employees, and active contracts of the
4 Northeast Maryland Waste Disposal Authority; and

5 (2) analyze whether the Maryland Environmental Service or the Maryland
6 Clean Energy Center is able to assume a portion or all of the functions, current employees,
7 and active contracts of the Northeast Maryland Waste Disposal Authority.

8 (b) (1) On or before December 1, 2024, the Maryland Environmental Service
9 and the Maryland Clean Energy Center shall submit a report to, in accordance with §
10 2–1257 of the State Government Article, the General Assembly on the review and analysis
11 conducted under subsection (a) of this section.

12 (2) The report submitted under paragraph (1) of this subsection shall:

13 (i) specify, for each of the Northeast Maryland Waste Disposal
14 Authority's active contracts, whether:

15 1. the Maryland Environmental Service or the Maryland
16 Clean Energy Center has the technical ability to assume the contract;

17 2. the contract is necessary;

18 3. the purpose of the contract can be achieved in another
19 manner, including by the relevant jurisdiction itself; and

20 4. the Maryland Environmental Service or the Maryland
21 Clean Energy Center could legally assume the contract;

22 (ii) specify whether current employees of the Northeast Maryland
23 Waste Disposal Authority could be legally reassigned to the Maryland Environmental
24 Service or the Maryland Clean Energy Center; and

25 (iii) include enough detail for the General Assembly to determine
26 whether the Northeast Maryland Waste Disposal Authority should continue in its current
27 form.

28 (c) (1) During the review and analysis conducted under subsection (a) of this
29 section, the Northeast Maryland Waste Disposal Authority shall:

30 (i) promptly provide any information that the Maryland
31 Environmental Service or the Maryland Clean Energy Center requests; and

32 (ii) otherwise cooperate with the Maryland Environmental Service
33 and the Maryland Clean Energy Center to carry out the requirements of this section.

1 (2) Information requested under paragraph (1)(i) of this subsection may be
2 provided in a format that protects the confidentiality of individuals as necessary.

3 (d) The Maryland Environmental Service and the Maryland Clean Energy Center
4 shall follow procedures to maintain the confidentiality of any information, documents, or
5 proceedings obtained or observed in the course of carrying out the requirements under this
6 section.

7 SECTION 4. AND BE IT FURTHER ENACTED, That a presently existing obligation
8 or contract right may not be impaired in any way by this Act.

9 SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take effect June
10 1, 2023.