

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

Committee Report: Favorable with amendments

House action: Adopted

Read second time: February 25, 2023

CHAPTER _____

1 AN ACT concerning

2 **Northeast Maryland Waste Disposal Authority – Evaluation ~~and~~, Termination of**
3 **Bond Authority, and Assumption of Functions, Employees, and Contracts**
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, and the Maryland Environmental Service, ~~and~~
14 ~~the Maryland Clean Energy Center~~ request; requiring the Department of Legislative
15 Services, and 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; requiring an entity that assumes certain aspects of the
18 Northeast Maryland Waste Disposal Authority to establish a system for maintaining
19 stakeholder engagement; requiring the Maryland Environmental Service to
20 temporarily assume and maintain certain aspects of the Northeast Maryland Waste
21 Disposal Authority under certain circumstances and until a certain entity is
22 prepared and ready to assume those aspects; and generally relating to the Northeast
23 Maryland Waste Disposal Authority.

24 BY repealing and reenacting, with amendments,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Article – Natural Resources
2 Section 3–905(a) and 3–907(a)
3 Annotated Code of Maryland
4 (2018 Replacement Volume and 2022 Supplement)

5 BY adding to
6 Article – Natural Resources
7 Section 3–907.1
8 Annotated Code of Maryland
9 (2018 Replacement Volume and 2022 Supplement)

10 Preamble

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

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

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

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

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

35 WHEREAS, The local government in Montgomery County stated an intention to
36 close the waste-to-energy facility in the county, the contract for which terminates in April
37 2026; and

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

4 WHEREAS, On formation of the Northeast Maryland Waste Disposal Authority in
5 1980, the General Assembly contemplated that, under the appropriate conditions, the
6 Northeast Maryland Waste Disposal Authority could merge into the Maryland
7 Environmental Service under § 3-924 of the Natural Resources Article; and

8 WHEREAS, In its December 2021 report, the State Transparency and Accountability
9 Reform Commission recommended that each agency the Commission reviewed, including
10 the Northeast Maryland Waste Disposal Authority, should undergo a review at least once
11 every 8 years, conducted by the legislature and similar to a sunset review, to assess the
12 agency's statutory compliance with its mission and vision; and

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

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

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

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

30 **Article – Natural Resources**

31 3-905.

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

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

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

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

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

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

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

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

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

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

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

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

33 (12) To take and hold title to any project which may be transferred to the
34 Authority, and to assume jurisdiction over and provide for the maintenance and operation
35 of said project, all on such terms as may be mutually agreed upon between the Authority
36 and the transferor. The Authority may contract with any subdivision to assume the
37 payment of the principal of and interest on obligations or indebtedness of such subdivision

1 incurred in connection with any project and may undertake to operate any project in such
2 a manner as to provide for the payment of all outstanding obligations or indebtedness
3 applicable to such project and the interest thereon and to transfer to the appropriate
4 subdivision an amount equal to the debt service payments prior to the applicable payment
5 date;

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

9 (14) To make and enter into contracts with the federal or any state
10 government (or any agency, instrumentality or subdivision thereof) or with any subdivision
11 or person within or without the State of Maryland providing for or relating to the
12 acquisition, construction, management, operation, and maintenance of any project or the
13 furnishing of services by or to any project or in connection with the services of any project
14 owned, operated, or controlled by the other contracting party; such contracts may make
15 provision for:

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (19) To enter into agreements with the Maryland Environmental Service
28 providing for the assumption by the Maryland Environmental Service of such activities of
29 the Authority as the Authority may deem necessary or desirable to effectuate its purposes,
30 including agreements relating to the exchange of information between the Authority and
31 the Maryland Environmental Service, the sharing of planning resources, the provision by
32 the Maryland Environmental Service of personnel, consulting services and technical
33 assistance to the Authority, and the acquisition, construction, supervision, operation or
34 maintenance of one or more projects by the Maryland Environmental Service; and

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

1 (a) [The] **EXCEPT AS PROVIDED IN § 3-907.1 OF THIS SUBTITLE, THE**
2 Authority is hereby authorized and empowered, by resolution, to issue bonds for the
3 purpose of financing the cost of one or more projects or for any other corporate purpose.
4 Except as may otherwise be expressly provided by the Authority, every issue of its bonds
5 shall be general obligations of the Authority payable from any revenues or money of the
6 Authority available therefor and not otherwise pledged, subject only to any agreements
7 with holders of particular bonds pledging any particular revenues or money and to any
8 agreements with any persons or subdivisions. The Authority may issue its bonds without
9 obtaining the consent of any board, agency, department or unit of the State, and without
10 any other proceedings or the happening of any conditions or things other than those
11 specifically required hereunder. The Authority and the Maryland Environmental Service
12 may enter into agreements providing for (i) the financing by the issuance of bonds of the
13 Maryland Environmental Service of projects provided for any subdivision by the Authority
14 or (ii) the financing by the issuance of bonds of the Authority of projects provided for any
15 subdivision by the Maryland Environmental Service.

16 **3-907.1.**

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

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

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

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

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

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

27 (1) the statutes related to the Northeast Maryland Waste Disposal
28 Authority;

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

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

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

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

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

9 (7) whether the operations of the Northeast Maryland Waste Disposal
10 Authority have led to cost savings for the State and, relative to costs for nonmember
11 jurisdictions, the member jurisdictions of the Northeast Maryland Waste Disposal
12 Authority;

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

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

16 (ii) the retirement and pension of Northeast Maryland Waste
17 Disposal Authority employees;

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

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

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

26 (i) improve the operations of the Northeast Maryland Waste
27 Disposal Authority; and

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

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

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

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

3 1. efficiency;

4 2. effectiveness, including the ability of the Northeast
5 Maryland Waste Disposal Authority to serve the modern waste disposal needs of member
6 jurisdictions;

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

9 A. through responsible production, consumption, reuse, and
10 recovery of products, packaging, and materials; and

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

13 4. sufficiency of resources;

14 5. governance;

15 6. adherence to and accomplishment of legislative objectives;

16 and

17 7. statutory purpose, including whether the statutory
18 purpose is appropriate and sufficient to help Maryland achieve the waste diversion and
19 recycling goals in the Maryland Recycling Act and the policies and goals established in
20 Executive Order 01.01.2017.13, Waste Reduction and Resource Recovery Plan for
21 Maryland; and

22 (ii) include draft legislation to:

23 1. merge the Northeast Maryland Waste Disposal Authority
24 into the Maryland Environmental Service; and

25 2. implement any other statutory changes recommended in
26 the report.

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

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

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

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

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

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

9 (a) The Maryland Environmental Service ~~and the Maryland Clean Energy Center~~
10 shall:

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

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

16 (b) (1) On or before December 1, 2024, the Maryland Environmental Service
17 ~~and the Maryland Clean Energy Center~~ shall submit a report to, in accordance with §
18 2-1257 of the State Government Article, the General Assembly on the review and analysis
19 conducted under subsection (a) of this section.

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

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

23 1. the Maryland Environmental Service ~~or the Maryland~~
24 ~~Clean Energy Center~~ has the technical ability to assume the contract;

25 2. the contract is necessary;

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

28 4. the Maryland Environmental Service ~~or the Maryland~~
29 ~~Clean Energy Center~~ could legally assume the contract;

30 (ii) specify whether current employees of the Northeast Maryland
31 Waste Disposal Authority could be legally reassigned to the Maryland Environmental
32 Service ~~or the Maryland Clean Energy Center~~; and

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

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

6 (i) promptly provide any information that the Maryland
7 Environmental Service ~~or the Maryland Clean Energy Center~~ requests; and

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

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

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

16 SECTION 4. AND BE IT FURTHER ENACTED, That an entity that assumes a
17 portion or all of the functions, current employees, or active contracts of the Northeast
18 Maryland Waste Disposal Authority shall establish a system for maintaining stakeholder
19 engagement.

20 SECTION 5. AND BE IT FURTHER ENACTED, That the Maryland Environmental
21 Service shall:

22 (1) temporarily assume all of the functions, current employees, and active
23 contracts of the Northeast Maryland Waste Disposal Authority during any merger of the
24 Northeast Maryland Waste Disposal Authority with another entity; and

25 (2) maintain the assumption of the functions, current employees, and
26 active contracts of the Northeast Maryland Waste Disposal Authority until the entity with
27 which the Northeast Maryland Waste Disposal Authority merges is prepared and ready to
28 assume those functions, current employees, and active contracts.

29 ~~SECTION 6.~~ SECTION 6. AND BE IT FURTHER ENACTED, That a presently existing
30 obligation or contract right may not be impaired in any way by this Act.

31 ~~SECTION 7.~~ SECTION 7. AND BE IT FURTHER ENACTED, That this Act shall take effect
32 June 1, 2023.