

Department of Legislative Services
 Maryland General Assembly
 2023 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 161

(Delegates Korman and Szeliga)

Environment and Transportation

Education, Energy, and the Environment

Northeast Maryland Waste Disposal Authority - Evaluation, Termination of Bond Authority, and Assumption of Functions, Employees, and Contracts (Northeast Maryland Waste Disposal Authority Sunset Act)

This bill terminates the Northeast Maryland Waste Disposal Authority’s (NMWDA) bond authority beginning June 1, 2023. The bill also requires the Department of Legislative Services (DLS) to conduct a specified evaluation, and the Maryland Environmental Service (MES) to conduct a specified review and analysis, of NMWDA. NMWDA must provide information to those entities and cooperate, as specified. By December 1, 2024, DLS and MES must submit reports on their evaluation/review to specified legislative committees and the Maryland General Assembly (MGA), respectively. Among other things, the DLS report must include draft legislation to merge NMWDA into MES. The bill further requires (1) MES to temporarily assume the functions, employees, and contracts of NMWDA during any merger until the entity with which NMWDA merges is prepared and ready to assume those functions, employees, and contracts and (2) an entity that assumes a portion or all of the functions, employees, or contracts to establish a system for maintaining stakeholder engagement. **The bill takes effect June 1, 2023.**

Fiscal Summary

State Effect: No effect in FY 2023. Nonbudgeted expenditures increase by \$100,000 in FY 2024 for MES to conduct the required review; nonbudgeted revenues increase correspondingly. Potential increase in general fund expenditures in FY 2024 and 2025 for DLS to conduct the required evaluation. Nonbudgeted revenues and expenditures may increase (potentially significantly), likely not before FY 2026, to the extent MES temporarily assumes aspects of NMWDA, as discussed below.

(in dollars)	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
NonBud Rev.	\$100,000	\$0	-	-	-
GF Expenditure	-	-	\$0	\$0	\$0
NonBud Exp.	\$100,000	\$0	-	-	-
Net Effect	\$0	(-)	\$0	\$0	\$0

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Potential increase in local expenditures for NMWDA member jurisdictions in FY 2024 and/or 2025. Potential effect on local finances for member jurisdictions from the termination of NMWDA's bond authority.

Small Business Effect: Minimal.

Analysis

Bill Summary:

Bond Authority of the Northeast Maryland Waste Disposal Authority

The bill prohibits NMWDA from issuing bonds beginning June 1, 2023. However, this prohibition does not impair NMWDA's powers and authority regarding any bonds that are outstanding and unpaid as of June 1, 2023, or any contracts that, as of June 1, 2023, rely on NMWDA's bonding authority.

The bill explicitly states that any presently existing obligation or contract may not be impaired in any way by the bill.

Department of Legislative Services Evaluation and Report

DLS must conduct an evaluation of NMWDA, including a review of several specified items, including (1) the statutes related to NMWDA and whether NMWDA is fulfilling its statutory purpose, as specified; (2) whether continuing NMWDA is necessary for the public interest, including whether NMWDA's statutory purpose serves the needs of the State; (3) whether NMWDA's systems for procurements and contract awards have created any conflicts of interests; (4) whether NMWDA and its operations have led to a reduction in waste sent to incinerators and landfills, higher recycling rates, and cost savings, as specified; (5) what impact discontinuation of NMWDA would have on the State Retirement and Pension System and the retirement and pension of NMWDA employees; (6) how to dispose of cash reserves and other holdings if NMWDA is discontinued; (7) whether another entity, such as MES, is better able to perform NMWDA's duties and functions; and (8) any legislative or nonlegislative changes that should be recommended to MGA to improve NMWDA operations and merge NMWDA into MES or other appropriate entity.

DLS must submit a report of its evaluation to specified legislative committees by December 1, 2024. The report must address NMWDA's efficiency, effectiveness, and technical abilities, as specified. It also must include draft legislation to merge NMWDA into MES and implement any other statutory changes recommended in the report.

During the evaluation conducted by DLS, NMWDA must promptly provide any information that DLS requests, as specified, and otherwise cooperate. The bill establishes provisions governing confidentiality of information.

Maryland Environmental Service Review and Report

MES must (1) review NMWDA's functions, current employees, and active contracts and (2) analyze whether MES is able to assume all or a portion of NMWDA's functions, current employees, and active contracts.

By December 1, 2024, MES must submit a report to MGA on the review and analysis conducted. The report must specify, for each of NMWDA's active contracts, whether (1) the contract is necessary and if MES has the technical ability to assume the contract; (2) the purpose of the contract can be achieved in another manner, as specified; and (3) MES could legally assume the contract. The report must also specify whether current NMWDA employees could be legally reassigned to MES. In addition, the report must include enough detail for MGA to determine whether NMWDA should continue in its current form.

During the review and analysis, NMWDA must promptly provide any information that MES requests, as specified, and otherwise cooperate. The bill establishes provisions governing confidentiality of information obtained during the review and analysis.

Assumption of Functions, Employees, and Contracts from the Northeast Maryland Waste Disposal Authority

During any merger of NWMDA with another entity, MES must temporarily assume all of NMWDA's functions, current employees, and active contracts. MES must maintain the assumption of these functions, employees, and contracts until the entity with which NMWDA merges is prepared and ready to assume those functions, employees, and contracts.

An entity that assumes a portion or all of NMWDA's functions, current employees, or active contracts must establish a system for maintaining stakeholder engagement.

Current Law:

Northeast Maryland Waste Disposal Authority

Chapter 871 of 1980 established NMWDA and codified MGA's statement of purpose regarding NMWDA. This statement includes the mission for NMWDA to improve health and living conditions in the State through the efficient collection and disposal of waste on

a regional basis and the generation of energy and recovery of useable resources from such waste to the extent practicable. NMWDA assists member jurisdictions with the planning and development of waste management and waste-to-energy systems by serving as a regional coordinating agency and a financing vehicle for facilities. Member jurisdictions include Anne Arundel, Baltimore, Carroll, Frederick, Harford, Howard, and Montgomery counties and Baltimore City.

Among other things, NMWDA has the authority to borrow money and issue bonds for specified purposes and to enter into and make contracts or agreements as it determines necessary or incidental to the performance of NMWDA's duties and to the execution of the purpose of and powers granted by statute. NMWDA is required to submit an annual report to the Governor, the chief executive officer, and the legislative body of each participating county of its activities for the preceding fiscal year. Each report must include the full operating and financial statement of its operations during the year. Additionally, NMWDA is subject to an annual audit at the end of each fiscal year.

Statute specifies that, upon making adequate provision for the payment of all outstanding bonds, NMWDA is authorized to merge into MES with the consent of MES and the Governor's approval. Upon termination of its existence, all NMWDA's rights and properties must pass to and be vested in the State for distribution as may be provided for in contracts between NMWDA and participating counties and in the statement of merger.

Maryland Environmental Service

MES was established by MGA in 1970 as 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. Among other things, MES has the authority to issue bonds and notes.

Pursuant to the MES Reform Act of 2021 (Chapter 72), MES is required 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.

Maryland Program Evaluation Act

The Maryland Program Evaluation Act (MPEA) is used by the General Assembly as a mechanism to monitor and evaluate approximately 60 regulatory boards, commissions, and

other activities and units of the Executive Branch of State government. DLS may evaluate entities subject to MPEA as directed by the Legislative Policy Committee, the Joint Audit and Evaluation Committee, the Executive Director of Legislative Services, the Director of the Office of Program Evaluation and Government Accountability, or by legislation. Most such entities are subject to termination. Accordingly, the evaluation process is better known as “sunset review.”

State Fiscal Effect:

Maryland Environmental Service

Nonbudgeted expenditures for MES increase by approximately \$100,000 in fiscal 2024 to hire a consultant to conduct the required review and analysis and complete the required report of NMWDA’s functions, current employees, and active contracts. 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 in fiscal 2024.

MES finances (nonbudgeted expenditures and revenues) may be affected – potentially significantly – due to the temporary assumption of the functions, current employees, and active contracts of NMWDA during any merger of NMWDA with another entity. Given the December 1, 2024 deadlines for both the MES and DLS reports required by the bill, any legislation to effectuate a merger would likely be introduced during the 2025 session. As a result, it is unlikely that any merger would occur prior to the beginning of fiscal 2026. Actual impacts on MES finances will depend on a number of unknown factors, including the state of any contracts that are assumed and the number of employees that are working at NMWDA at the time. Therefore, a reliable estimate of the potential impact related to the temporary assumption of NMWDA duties cannot be made at this time. In any event, to the extent the increase in MES expenditures is higher than the increase in revenues it collects from NMWDA contracts, it is assumed that MES recoups the difference through an increase in fees.

Department of Legislative Services

DLS anticipates being able to conduct the required review and prepare and present the required report with existing budgeted resources. However, to the extent that the bill’s requirements cannot be absorbed by existing DLS staff, general fund expenditures for DLS increase in fiscal 2024 and 2025 for DLS to hire additional staff and/or obtain contractual assistance.

Local Fiscal Effect: NMWDA estimates that the cost for existing staff to respond to inquiries and otherwise cooperate with DLS and MES during the required reviews is

approximately \$50,000. NMWDA also estimates that it may incur legal and accounting costs of approximately \$50,000 in support of the reviews. NMWDA is funded by membership fees from its member jurisdictions through an annual budget process. Thus, local expenditures for member jurisdictions increase in fiscal 2024 and/or 2025, in the form of membership fees, for any expenditures that are not able to be absorbed with existing resources.

NMWDA member jurisdictions (Anne Arundel, Baltimore, Carroll, Frederick, Harford, Howard, and Montgomery counties and Baltimore City) may also be affected by the prohibition against NMWDA issuing bonds beginning June 1, 2023. According to Montgomery County, absent additional authority being provided through another entity, this reduces options for member jurisdictions to finance qualified projects in the future.

Any other impacts on member jurisdictions ultimately depend on the findings and recommendations included in the required reports and any actions taken in response, which cannot be predicted.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Maryland Environmental Service; Harford and Montgomery counties; Northeast Maryland Waste Disposal Authority; University System of Maryland; Maryland Department of the Environment; Department of Legislative Services

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