

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 639

(Senator Bailey)

Education, Energy, and the Environment

Appropriations

Historic St. Mary's City Commission Reform Act of 2023

This bill makes numerous changes to the governance of the Historic St. Mary's City Commission, including (1) altering the commission's membership; (2) requiring the commission to develop and publish written policies regarding the commission's operating procedures; and (3) authorizing and establishing rules for the commission to collaborate with affiliated nonprofit organizations, including the Historic St. Mary's City Foundation. By December 31, 2023, the commission must report to the General Assembly on the commission's progress in addressing the concerns raised by its most recent independent audit. **The bill takes effect June 1, 2023.**

Fiscal Summary

State Effect: The bill is not expected to materially affect State finance and operations.

Local Effect: The bill is not expected to materially affect local finances and operations.

Small Business Effect: Minimal.

Analysis

Bill Summary/Current Law: The Historic St. Mary's City Commission is an independent unit of State government with the mission of preserving and protecting the archaeological and historical record of Maryland's first capital and to appropriately develop historic and scenic sites for the education, enjoyment, and general benefit of the public.

Membership and Meetings of the Historic St. Mary's City Commission

Under current law, there are 17 members of the commission, 13 of whom are appointed by the Governor with the advice and the consent of the Senate. In addition, the chairman of the St. Mary's College of Maryland Board of Trustees (or the chairman's designee) and the President of the Historic St. Mary's Foundation are *ex officio* voting members. The President of the Senate (or a designee) and the Speaker of the House of Delegates (or a designee) also serve as *ex officio* nonvoting members.

The bill makes numerous changes to the membership, including (1) requiring one member to be a representative of the Native American community, appointed in consultation with the Maryland Commission on Indian Affairs; (2) establishing that the President of the Historic St. Mary's Foundation is a nonvoting member; and (3) repealing the *ex officio* membership of the President of the Senate and the Speaker of the House, instead establishing that these officials are each to appoint one member of the public to serve as a voting member.

Under current law, the manner of election of officers and their terms of office must be as the commission determines. The bill requires that the officers of the commission be selected from the appointed members of the commission.

Under current law, the commission must meet at least two times per year at Historic St. Mary's City. The bill specifies that the commission may meet more than two times a year at Historic St. Mary's City or virtually.

Duties of the Historic St. Mary's City Commission

Among other duties specified in statute, the commission must:

- maintain and carry out the mission of Historic St. Mary's City;
- protect and preserve the historical and archaeological resources found within the boundaries of Historic St. Mary's City;
- enhance the role of Historic St. Mary's City as a statewide educational center for historical archaeology and Maryland colonial history, as specified;
- develop close working relationships with public and private elementary and secondary schools, local and statewide businesses and governmental agencies, and conduct activities to educate the general public about the history and significance of Historic St. Mary's City;
- seek private and other public grants, gifts, bequests, endowments, and legacies for the development and use of Historic St. Mary's City; and

- prepare an overall strategic plan at least once every five years that establishes both short-range and long-range goals, objectives, and priorities for Historic St. Mary's City in support of its mission.

The bill also requires the commission to develop and publish written policies regarding the commission's operating procedures, including policies on (1) procurement; (2) human resources; (3) payroll; (4) cash management; (5) fleet management; and (6) property management, including rental tenant waiting lists. Furthermore, the commission must develop a comprehensive maintenance plan (and update the plan at least once every three years) and annually review the commission's operating agreements and policies on operating procedures.

Joint Operations with Other Agencies

Under current law, the commission and the Board of Trustees of St. Mary's College are authorized to undertake joint programs and otherwise to work collaboratively under contract or other agreement acceptable to the governing boards of each institution, for the purpose of furthering the missions of both institutions. The commission and the college may, by contract *or mutual agreement*, perform administrative tasks by one institution for the other, including, but not limited to, specified tasks such as procurement and insurance claim processing, purchasing, accounting, and information system design. The bill repeals the provision regarding the authority to perform administrative tasks by mutual agreement.

The bill requires that if the commission obtains services under an agreement with St. Mary's College, the services provided must be in accordance with the college's policies and procedures.

Furthermore, the bill requires that an operating agreement entered into by the commission with another unit of State government or an affiliated nonprofit organization be (1) executed in writing; (2) approved for form and legal sufficiency by the Attorney General; (3) reviewed by the commission annually; and (4) enacted for a term not exceeding three years, which may be renewed for additional terms not exceeding three years, without limit.

Collaboration with Affiliated Nonprofit Organizations (As Added by the Bill)

The bill specifies that the commission may collaborate with "affiliated nonprofit organizations," which the bill specifically defines as including the Historic St. Mary's City Foundation. The commission is also encouraged to promote private fundraising by strengthening institutional development activities. The commission must develop policies for collaboration with an affiliated nonprofit organization, which must be reviewed for

form and legal sufficiency by the Attorney General; if appropriate, the Attorney General must approve them to govern the collaboration. The State Ethics Commission must also review the policies that pertain to conflicts of interest and, if appropriate, approve them to govern an official or employee of the commission also serving as a director or official of an affiliated nonprofit organization.

The bill further specifies that an affiliated nonprofit organization may not be considered an agency or instrumentality of the State or a unit of the Executive Branch for any purpose. A financial obligation or liability of an affiliated nonprofit organization may not be considered a debt or an obligation of the State or the commission.

Specified provisions of the General Provisions Article (generally, ethics rules governing conflicts of interests) do not prohibit an official or employee of the commission from also becoming a director or an official of an affiliated nonprofit organization. An official or employee of the commission who serves as a director or official of an affiliated nonprofit organization may not be compensated (directly or indirectly) by the affiliated nonprofit organization but may be reimbursed for specified expenses.

The commission must notify the State Ethics Commission in writing whenever the commission authorizes an official or employee of the commission to serve as a director or official of an affiliated nonprofit organization. Within 30 days of receipt of the notice, the State Ethics Commission must notify the commission of any objections or concerns pertaining to the joint service identified in the notice. If the State Ethics Commission sends a notice, the commission must reexamine the matter.

Each year, the bill requires the commission to report the following information to the Governor, the State Ethics Commission, and the Legislative Policy Committee: (1) the names of the officials and employees serving as a director or official of an affiliated nonprofit organization; and (2) how the policies and procedures regarding collaboration with the foundation have been implemented in the preceding year.

The bill prohibits any funds from being accepted by the commission from an affiliated nonprofit organization unless an independent certified public accountant audits the fiscal affairs of the affiliated nonprofit organization each year. Funds given to the commission by an affiliated nonprofit organization may not include preconditions on the use of the funds. However, funds given to the commission through an affiliated nonprofit organization *from a donor* may include conditions at the donor's request.

Presently existing obligations or contract rights are not impaired by the bill.

Historic St. Mary's City Fund

Under current law, special nonlapsing State funds are automatically subject to audit during any examination of units of State government, as generally authorized under the State Government Article. The bill specifies that the Historic St. Mary's City Fund is subject to audit by the Office of Legislative Audits.

Additional Information

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

Designated Cross File: HB 1042 (Delegate Crosby) - Appropriations.

Information Source(s): Office of the Attorney General; Governor's Office; St. Mary's College of Maryland; State Ethics Commission; Department of Legislative Services – Office of Legislative Audits

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