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Maryland Clean Energy Center (MCEC) was created as an instrumentality of state in 2008 through an act of the Maryland General Assembly.

MCEC focuses on an economic development mission to advance the adoption of clean energy and energy efficiency products, services and technologies along with the associated jobs and wages for Maryland. MCEC leverages private capital and private sector capabilities; facilitates the commercialization of innovative advanced energy technologies; strives to reduce energy costs for consumers, and drive reductions in greenhouse gas emissions associated with the use of fossil fuels.

SB 399 - State Government - Quasi Governmental Units - Oversight & Governance

March 3, 2022 Senate Education, Health, and Environmental Affairs Committee

SUPPORT with AMENDMENT

Maryland Clean Energy Center appreciates and supports the need to ensure the effective oversight and governance of independent instrumentalities of state, like MCEC. Concerns with the proposed legislation are not as much related to what is intended, but to how it is suggested to be accomplished.

In summary, SB 399 seeks to reclassify MCEC among the entities listed, as a “quasi-governmental unit” and proposes to change its oversight and governance. MCEC concerns have to do with potential operational issues that may arise and unbudgeted costs the instrumentality may have to absorb to implement the directives proposed in the bill.

As an instrumentality of state impacted by this proposed legislation, MCEC appreciates the need to ensure effective and efficient management of state enabled bodies. If implemented as written, MCEC is concerned about the potential fiscal and operating impact of the legislation. The following summary is offered for your consideration:

- I. **Designation as Quasi- Governmental Units of Government is a change from the designation in statute of independent Instrumentality of State.** The term “quasi-governmental entity” is undefined in the legislation, which if enacted, may impact the ability of several of the entities to issue bonds for project financing. This change in designation may affect the ability of MCEC to perform related legislatively mandated functions, impacting:
 - ability to finance projects with loans, grants and other financing
 - tax exemption status for bond issuance
 - tax exemptions on properties or activities, and
 - sovereign immunity in relation to tort and contract claims

Appropriate wording changes to the language of the legislation could mitigate these concerns.

- II. **Requiring submittal of budgets to DBM for inclusion in state budget books in the manner required by DBM, and requiring budget committees to hold bi-annual hearings on the budget of instrumentalities.**

This proposed directive is of concern because wording does not prescribe what DBM will require in terms of reporting, and how those requirements may or may not align with the statutory requirements for each instrumentality.

MCEC suggests that the annual requirement for audited financial statements to be prepared and posted serves to ensure certain transparency and standards of operational governance for the instrumentality.

Additionally HB 375/ SB 269, entitled "Open Meetings Act-Application and Enhanced Requirements", if passed will require instrumentalities to post meeting materials on-line in advance of and following each meeting. This would include proposed and approved annual budgets which should also serve to provide the desired transparency.

III. Require assessment of board operations every 5 years by an independent consultant or accountant.

MCEC will incur significant cost to implement this particular directive, ultimately redirecting funds otherwise targeted at efforts to accomplish the primary statutorily mandated mission of the organization. This is particularly impactful for MCEC as it is attempting to generate sustainable operating capital. Costs are estimated to range from \$30K to \$100K, for each year of assessment, and MCEC does not currently have the resources budgeted for this purpose. If this mandate remains in adopted statute, MCEC would suggest language be included in the bill to provide reimbursement from a state funded account upon completion of each evaluation.

The standards by which boards would be evaluated should be clearly articulated in the bill, and balanced with efforts to ensure board members are prepared to succeed in the appointed role. We suggest that a more effective and affordable approach to insuring effective board management of operations would be for the State to provide centralized training for appointees prior to approval for appointment. Training should include considerations of fiduciary responsibility, ethics requirements and Open Meetings Act compliance.

IV. Require DLS evaluation of instrumentalities every 8 years to determine whether or not the entity is fulfilling its statutory purpose, if another governmental entity or private business is better able to perform the functions of the instrumentality, and if any legislative or non-legislative changes should be recommended to the General Assembly to improve the operations of the entity.

Instrumentalities of the state are required to submit annual reports to the DLS, the Governor and legislative leadership. Those reports serve to provide information relevant to the evaluative criteria outlined in section 9.6-302C of the bill.

Requiring DLS to subjectively evaluate the performance of each instrumentality is a time consuming obligation, and puts the instrumentality in the position of having to defend its existence. MCEC believes its board is capable of providing direction to the policy bodies about the effectiveness of and continued need for the instrumentality.

The bill calls for MCEC to be one of the first instrumentalities evaluated in the cycle. However, MCEC has been through the evaluative process already several times over the past few years, including:

2014: SB 985 passed directing the center to study the need, feasibility and role of a Maryland Green Bank.

<https://www.mdcleanenergy.org/wp-content/uploads/2019/06/MCEC-Green-Bank-Study-Final-Report-2015.pdf>

2016: Legislative Task Force was convened to evaluate the need for MCEC, examine the report recommendations, look at other state models, and recommend a funding strategy for the instrumentality.

2017: SB 313 MCEC was directed to complete and submit a strategy for sustainability report.

<https://www.mdcleanenergy.org/wp-content/uploads/2019/12/MCEC-Impact-and-Sustainability-Strategy-Report-12.2019.pdf>

MCEC recommends this directive for evaluation every 8 years by DLS be eliminated from the bill. At a minimum, if included in a version of this bill to be adopted, MCEC respectfully requests amendment language to move MCEC further back in the evaluative cycle to the year 2029.

MCEC appreciates the committee's consideration of these concerns as you deliberate the passage of SB 399.