

Department of Legislative Services
 Maryland General Assembly
 2023 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 840 (Delegate Boyce)
 Environment and Transportation and
 Economic Matters

Climate, Labor, and Environmental Equity Act of 2023

This bill requires the Maryland Department of the Environment (MDE) to conduct a climate and environmental equity evaluation of a permit application if, after conducting an Environmental Justice (EJ) score review required under current law, MDE determines that issuing an approval for the permit may impact an underserved community or an overburdened community. The bill establishes provisions relating to such an evaluation and establishes additional requirements for MDE regarding public input. MDE must adopt regulations and may charge a reasonable fee to cover implementation costs associated with the provisions described above. The bill also (1) alters existing provisions that require State agencies to review and report on their programs to identify and recommend actions to more fully integrate the consideration of Maryland’s greenhouse gas (GHG) reduction goal and the impacts of climate change and (2) establishes a new annual reporting requirement for the Maryland Department of Labor (MDL). **The bill takes effect October 1, 2024.**

Fiscal Summary

State Effect: General fund expenditures for MDE increase by \$1.7 million in FY 2025; out-years reflect annualization, inflation, and ongoing costs. State expenditures (all/multiple funds) may increase beginning in FY 2025. General fund revenues increase beginning in FY 2025 to the extent MDE establishes a fee, as discussed below.

(in dollars)	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
GF Revenue	-	-	-	-	-
GF Expenditure	\$1,656,200	\$853,800	\$891,400	\$937,900	\$981,100
GF/SF Exp.	-	-	-	-	-
Net Effect	(-)	(-)	(-)	(-)	(-)

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

Local Effect: The bill may affect local governments as permit holders, as discussed below.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary/Current Law:

Climate and Environmental Equity Permit Evaluations Required by the Bill

The bill requires MDE to conduct a climate and environmental equity evaluation of a permit application if, after conducting an EJ score review required under current law, MDE determines that issuing an approval for a permit may impact an underserved community or an overburdened community. The evaluation may include an analysis of several specified items. In addition, MDE, in coordination with the Maryland Department of Health, may conduct a health impact assessment of the permit.

The bill also requires MDE to regularly provide opportunity for State residents to opt in to text, phone, email, or regular mail notifications regarding any facility with a pending or final permit approval in or adjacent to the resident's census tract.

If an applicant is applying for more than one permit for the same facility, the bill allows MDE to conduct only one evaluation for the facility unless MDE determines that more than one evaluation is necessary, as specified. This provision does not limit MDE's authority to hold or require additional public hearings for a permit. MDE may deny or alter a decision or amend the conditions under a pending permit based on its findings under the above provisions.

“Applicant” means a person applying for a permit listed under § 1-604(a) of Title 1 of the Environment Article, which is discussed below.

State Agency Review and Reports on Progress Toward Greenhouse Reduction Goal and Impacts of Climate Change

Mandatory Review and Recommendations: Current law requires each State agency to review its planning, regulatory, and fiscal programs to identify and recommend actions to more fully integrate the consideration of Maryland's GHG reduction goal and the impacts of climate change. The bill requires this review to also include the geographic impacts of climate change. Under current law, the review must include the consideration of (1) sea level rise; (2) storm surges and flooding; (3) increased precipitation and temperature; and (4) extreme weather events. The bill expands the required considerations to include whether agency decisions contribute to local deterioration of public health or increases in

pollution associated with health and environmental burdens for underserved and overburdened communities.

The bill expands an existing requirement that each State agency identify and recommend specific policy planning, regulatory, and fiscal changes to existing programs that do not currently support the State's GHG reduction efforts or address climate change. Under the bill, each State agency must identify and recommend changes to existing programs that do not currently address the geographic impacts of climate change.

Maryland Department of Labor Report: The bill establishes a new requirement for MDL to annually report on whether agency decisions support businesses that promote equitable labor and wage standards, as specified. The report must include consideration of a number of listed items, including, among other things, whether the agency supports businesses that (1) pay the area prevailing wage standard for each trade, as specified; (2) are in good standing with all State reporting and compliance requirements; and (3) participate in an apprenticeship program registered with the State for each trade employed on a project or other item associated with the project.

Altered Annual Report Requirements

Under current law, 11 specified State agencies must annually report on the status of programs that support the State's GHG reduction efforts or address climate change to the Commission on Environmental Justice and Sustainable Communities and the Governor. The bill requires the report to also address the geographic impacts of climate change. The bill also requires the report to be submitted by December 1 of each year, requires each State agency to make the report publicly available on its website, and adds the General Assembly to the list of report recipients.

Current law specifies that the annual report submitted by those agencies must include (1) program descriptions and objectives; (2) implementation milestones, and whether or not they have been met; (3) enhancement opportunities; (4) funding; (5) challenges; (6) estimated GHG emissions reductions, by program, for the prior calendar year; and (7) any other information that the agency considers relevant. The bill specifies that this required information must be for the immediately preceding 12-month period and requires the report to also include agency contributions or impediments to environmental justice.

Scope of Title 1, Subtitle 6 of the Environment Article

Under current law, Title 1, Subtitle 6 of the Environment Article, which is unchanged by the bill, establishes the general public participation requirements for a number of permits issued by MDE. More specifically, the subtitle establishes the general public notice and hearing requirements for (1) air quality control permits to construct; (2) permits to own,

operate, establish, or maintain a controlled hazardous substance facility; (3) permits to own, operate, or maintain a hazardous material facility; (4) permits to own, operate, establish, or maintain a low-level nuclear waste facility; (5) permits to install, materially alter, or materially extend landfill systems, incinerators for public use, or rubble landfills; (6) permits to discharge pollutants to waters of the State; and (7) permits to install, materially alter, or materially extend a structure used for storage or distribution of any type of sewage sludge issued, renewed, or amended.

Environmental Justice Screening for Certain Environmental Permit Applications

Under current law, a person who is applying for a permit under § 1-601(a) of the Environment Article must include, as part of the permit application, the “EJ Score” from the “Maryland EJ tool” for the census tract where the applicant is seeking a permit, unless the permit requires the applicant to use a tool developed by the U.S. Environmental Protection Agency. MDE must review the EJ Score for the census tract where the applicant is seeking a permit using the Maryland EJ tool to verify the applicant’s information.

Current law defines “EJ Score” to mean an overall evaluation of an area’s environment and existing environmental justice indicators, as defined by MDE in regulation, including pollution burden exposure, pollution burden environmental effects, sensitive populations, and socioeconomic factors. “Maryland EJ tool” means a publicly available State mapping tool that allows users to (1) explore layers of environmental justice concern; (2) determine an overall EJ Score for census tracts in the State; and (3) view additional context layers relevant to an area.

State/Local/Small Business Effect:

Maryland Department of the Environment Administrative Expenditures and Associated Fee Revenues

General fund expenditures for MDE increase by \$1.7 million in fiscal 2025, which accounts for the bill’s October 1, 2024 effective date. This estimate reflects the cost of hiring 10 employees (four regulatory compliance engineers, four natural resources planners, one toxicologist, and one geologist) to (1) establish standards and conduct climate and environmental equity evaluations prior to issuing affected permits; (2) expand opportunities for nearby residents to opt into text, phone, or mail notifications about pending permit approvals; (3) incorporate the bill’s changes into the permitting process; (4) handle the additional permit review and issuance workload resulting from the bill; and (5) adopt implementing regulations. It includes salaries, fringe benefits, one-time start-up costs (including costs for contractual services to develop an assessment tool in order to compile the data required for the evaluations), and ongoing operating expenses. The information and assumptions used in calculating the estimate are stated below:

- the cost incurred by the Massachusetts Department of Environmental Protection to hire a consultant to develop a similar assessment tool informed the estimate for contractual services;
- an estimated 130 permits each year (30 issued by MDE’s Air and Radiation Administration, 50 issued by MDE’s Land and Materials Administration, and 50 issued by MDE’s Water and Science Administration) are subject to the bill’s climate and environmental equity evaluation requirements;
- the bill represents a significant increase in MDE’s permit workload, and, without additional staff, delays in permit review times will occur; and
- current staff do not have the expertise to conduct the required climate and environmental equity evaluations.

Positions	10.0
Salaries and Fringe Benefits	\$635,390
Contractual Services	900,000
Vehicle Purchase	24,593
Operating Expenses	<u>96,230</u>
Total FY 2025 MDE Administrative Costs	\$1,656,213

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses. Ongoing costs for contractual services could be incurred but have not been included in this analysis; accordingly, out-year costs could be higher.

The bill authorizes MDE to charge a reasonable fee to cover its implementation costs. It is unclear whether a fee that is set at a level high enough to cover MDE’s costs would be considered “reasonable.” Based on the estimated number of affected permit applicants and the estimated costs describe above, the fee would need to be approximately \$12,700 per applicant in the first year and at least \$6,600 per applicant in the out-years. MDE indicates that it may set a fee but did not provide any information regarding a potential fee level. Nevertheless, to the extent MDE establishes a fee, general fund revenues increase accordingly.

Effect on State Agencies from Expanded Reporting Requirements

The bill establishes a new reporting requirement for MDL that, depending on how it is interpreted, could create significant new responsibilities and corresponding costs for both MDL and other State agencies. The Department of Legislative Services notes that that it is somewhat unclear as to whether MDL’s reporting requirement regarding “agency decisions” applies just to MDL decisions or all State agency decisions. Regardless, general fund expenditures for MDL likely increase beginning in fiscal 2025 to fulfill this

obligation and, depending on how the requirement is interpreted, the increase in costs could be significant. Similarly, general/special fund expenditures for other State agencies may increase beginning in fiscal 2025 to assist MDL with this effort.

Based on a limited survey of State agencies, it appears that most State agencies anticipate being able to review and report on the other additional information required by the bill with existing budgeted resources. However, the Alcohol and Tobacco Commission anticipates it incurs an additional \$15,000 in general fund expenditures annually beginning in fiscal 2025 to do so.

Effect on Permit Applicants and Permit Holders

The bill's impact on any entity that applies for a new permit or permit renewal affected by the bill (which could include State agencies, local governments, and small businesses) is largely unknown and cannot be accurately assessed at this time. The ultimate impacts depend on a number of unknown factors, including how MDE makes a determination of impact on an underserved community or an overburdened community, how many permit applications are ultimately affected, and whether MDE charges a fee to cover its costs. However, given the comprehensive nature of the climate and environmental equity evaluation established by the bill, and the fact that MDE may deny or alter a decision or amend the conditions under a pending permit based on its findings under the bill, for any permit application that triggers the evaluation requirement, there could be potentially significant permit delays and increased costs. Any such impacts begin as early as fiscal 2025.

Additional Information

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

Designated Cross File: SB 743 (Senators Jackson and Lewis Young) - Education, Energy, and the Environment.

Information Source(s): Department of Commerce; Maryland Department of Emergency Management; Alcohol and Tobacco Commission; Maryland State Department of Education; University of Maryland Medical System; Public School Construction Program; Department of General Services; Maryland Department of Health; Department of Juvenile Services; Maryland Department of Labor; Department of Natural Resources; Maryland Department of Planning; Department of Public Safety and Correctional Services; Maryland Department of Transportation; Maryland Department of the Environment; Maryland Insurance Administration; Department of Legislative Services

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