

HB161 - Northeast Maryland Waste Disposal Authority Sunset Act Frequently Asked Questions

Summary: HB161 implements recommendations of the State Transparency and Accountability Reform Commission, a bipartisan commission convened in 2021 to review and investigate the operations and structures of quasi-governmental agencies in Maryland. The Northeast Maryland Waste Disposal Authority, one of the quasi-governmental agencies the commission reviewed, duplicates the activities of other quasi-governmental agencies in everything except the Waste Disposal Authority's role in trash incineration. Given that all Maryland counties with proposed or existing trash incinerators have either rejected or closed them, or have stated their intention to stop using them, and given the Commission's recommendation that all quasi-governmental agencies in Maryland receive a routine sunset review periodically, and its decision to identify the Waste Disposal Authority by name as a candidate for special review, HB161 directs the Department of Legislative Services to conduct an independent review of the Waste Disposal Authority and return data and recommendations to the legislature regarding its future.

About the Northeast Maryland Waste Disposal Authority

What is the Northeast Maryland Waste Disposal Authority?

The Waste Disposal Authority is a quasi-governmental agency of 10 employees that was created in 1980 as “a regional coordinating agency and a financing vehicle” for “waste disposal facilities (including those which provide for energy generation and resource recovery) and facilities for the generation of steam, electricity, or other forms of energy from fuels which are derived from or are otherwise related to waste disposal facilities” ([MD. Natural Resources Code Ann. § 3-902](#)). The Waste Disposal Authority's original primary purpose is to coordinate and finance waste-to-energy facilities (trash incinerators) in Maryland.

Quasi-governmental agencies largely operate as private entities but are designed to fulfill public purposes. Other examples of quasi-governmental agencies in Maryland include the Maryland Stadium Authority, the Maryland Food Center Authority, and the Maryland Economic Development Corporation.

Maryland counties and Baltimore City can choose to join the Waste Disposal Authority and pay annual fees in order to have membership in this agency. These annual fees are in addition to management, administrative, service, and bond costs. For FY 2023, the Waste Disposal Authority collected over two million dollars in just membership fees. Anne Arundel County, Baltimore City and County, Carroll County, Frederick County, Harford County, Howard County, and Montgomery County are currently members of the Waste Disposal Authority.

What is the Northeast Maryland Waste Disposal Authority's history with trash incineration?

After its creation in 1980, the Waste Disposal Authority has planned, promoted, and financed several trash incinerators across Maryland:

- Opened in 1985, the BRESKO trash incinerator in Baltimore City is owned by WIN Waste Innovations (previously known as Wheelabrator), which still burns Baltimore City and County’s trash. The Baltimore City Mayor has [pledged not to renew the City’s contract](#) with this facility again. (“*Under my administration, we’re going to work to not burn as much at the incinerator as possible. And I will work my butt off to make sure that this is the last time we ever give them a new contract.*”)
- Opened in 1988, a trash incinerator in Harford County closed in 2016.
- Opened in 1995, the Montgomery County trash incinerator is owned by the Waste Disposal Authority and operated by Covanta. Montgomery County’s Executive has [pledged to close](#) this facility. (“*I am writing to inform you that we are beginning to take the steps necessary to change the way Montgomery County handles its solid waste and recycling... The end goal is to close the incinerator within the next 12-18 months.*”)
- In 2010 the Waste Disposal Authority contracted with Wheelabrator to build an incinerator in Frederick County, to be used and paid for by Frederick and Carroll Counties. Both counties withdrew from the project in 2014, in part because of the financial burden the project would have imposed on both Counties. That incinerator was never built.

The Waste Disposal Authority is still involved in management of the trash incinerator in Baltimore City, and continues its ownership of the Montgomery County facility, even though the bond debt has been paid and [title could have been transferred](#) to Montgomery County.

What projects does the Northeast Maryland Waste Disposal Authority manage other than trash incineration?

In the 43 years since its creation, the Waste Disposal Authority has seen significant mission creep from its original statutory purpose, especially as local governments express their intent to avoid or reduce reliance on trash incineration.

Each service the Waste Disposal Authority is now performing (other than trash incineration) is duplicative of services that other quasi-governmental state agencies offer, particularly [Maryland Environmental Service](#) (MES) as well as the [Maryland Clean Energy Center](#) (MCEC).

These are the projects and services described on the Waste Disposal Authority’s website, as compared to the service provided by MES and MCEC:

Northeast Maryland Waste Disposal Authority	Maryland Environmental Service
Landfill services . “The Authority works with	MES offers landfill engineering services ,

<p>member jurisdictions to design landfill expansions and provide construction oversight services. The Authority also helps to secure landfill services such as landfill aerial surveying and volumetric analysis and environmental monitoring services.”</p>	<p>including landfill design, closure cap systems, and leachate control. For example, MES’s work at the Brown Station Road Leachate Pretreatment Facility “saved our partner, Prince George’s County, more than \$400,000 in 2017.”</p>
<p>Landfill-gas-to-energy. The Authority has developed several landfill gas-to-energy facilities at landfills in member jurisdictions. However, two of these facilities, in Frederick and Montgomery Counties, ceased operation in 2017 and 2018 respectively.</p>	<p>MES’s landfill services include landfill gas collection and management and landfill gas capture and control including combined heat and power projects. Additionally, Wicomico County, not a member of the Waste Disposal Authority, has installed landfill-gas-to-energy at the Newland Park Landfill.</p>
<p>Composting. “The Baltimore City Composting Facility has been an integral component of biosolids management for the City of Baltimore since 1988. The facility is operated through a partnership between the Authority, Baltimore City and Veolia Water North America.” The facility processes sewage sludge from the Back River Wastewater Treatment Plant.</p>	<p>MES operates both yard waste composting and food waste composting for Prince George’s County and Montgomery County. The food waste compost facility has been extremely successful, growing to become the largest such compost facility on the East Coast. Additionally, MES offers biosolid management, and is currently involved in management of the Back River Wastewater Treatment Plant.</p>
<p>Recycling. “Our services include program planning and development, budget analyses, contracting with materials recovery facilities (MRFs), technical guidance, developing collection programs, market analyses, plus education, training and public information programs.”</p>	<p>MES offers services in the design, purchase, construction, and operation of recycling systems and the marketing of recycled materials. MES operates Prince George’s County’s Materials Recycling Facility in Capitol Heights and the Midshore Regional Recycling Program in Caroline, Kent, Queen Anne’s, and Talbot Counties.</p>
<p>Solar. “The Authority has been a leader in providing renewable energy from waste for many years. As renewable energy resources are becoming more important, the Authority has expanded its role in providing renewable energy by developing solar energy projects at solid waste facilities.”</p>	<p>MES offers planning, design, and construction for renewable energy projects. Many communities in MD have developed solar projects, including on capped landfills, without the Waste Disposal Authority’s involvement, including Prince George’s County. The Maryland Clean Energy Center provides procurement and technical support to its partners, and the Maryland Clean Energy Capital Program and MD-PACE Property Assessed Clean Energy Loan Programs are available to municipal customers.</p>

The mission creep of the Waste Disposal Authority has caused it to duplicate MES and MCEC operations, except for the Waste Disposal Authority's original statutory purpose of planning and financing waste-to-energy projects.

Why is it a matter of concern that the Waste Disposal Authority and MES offer the same services?

Duplicating services between two or more quasi-state agencies leads to potential redundancies and inefficiencies, potentially costing Maryland taxpayers more money without providing improved services. Also, compared to the Waste Disposal Authority, MES conducts its projects with more safeguards for the public required by statute. The General Assembly gave significant consideration to improving MES's operations, transparency, and accountability following concerns about its operations that arose in 2020, and the resulting [Maryland Environmental Service Reform Act of 2021](#) made many improvements to MES's operations, transparency, and accountability. Of particular pertinence to public concerns about waste management: that legislation of 2021 requires MES to report to the legislature on its efforts to reduce greenhouse gas emissions annually; the Waste Disposal Authority has no similar requirement.

Is the Waste Disposal Authority procuring services that meet member jurisdictions' needs?

This question deserves careful study by the State.

Some recent RFPs issued by the Waste Disposal Authority have been non-competitive, with one or zero respondents. For example, the Waste Disposal Authority board approved two Master Service Agreements at its [most recent board meeting in December](#). The first, for textile collection and reuse/recycling services, had initially received no responses to the Waste Disposal Authority's Request for Expressions of Interest (REOI). Almost two years later, the Waste Disposal Authority became aware that Frederick County had independently procured services from a company which the Waste Disposal Authority had no knowledge of, even though the company was servicing over 100 locations in Maryland. The second, for mattress and box spring collection and recycling, had received only one response to the Waste Disposal Authority's REOI.

To handle many of the project requests from its member jurisdictions, the Waste Disposal Authority supplies a list of engineers that it calls its "On-Call Consultants." The Waste Disposal Authority uses a prequalification process that includes issuing a consultant/engineer RFP once every five years, applying a scoring system that is not transparent to the public (the Waste Disposal Authority [denied a MD PIA](#) requesting the scores from the 2017 selection). This procurement process does not facilitate a bidding process that would attract professionals other than engineering firms who specialize in waste-to-energy and landfill services.

In the 2022 selection, [approved at the board meeting in April](#), and in prior selections, the Waste Disposal Authority excluded nationally renowned experts in sustainable solid waste

management planning from selection as on-call contractors; the same experts have been selected by Washington, D.C., to develop its [Zero Waste DC Plan](#). The Waste Disposal Authority's decision to exclude these leaders means that comparable expertise is not available for its member jurisdictions for the development of more forward-thinking solid waste management strategies. Planning processes conducted by the Waste Disposal Authority's on-call consultants have not led to significant levels of solid waste reduction and diversion that are possible with sustainable solid waste management planning.

For example, at Montgomery County's request, the Waste Disposal Authority issued an RFP for a consulting group to develop an "Aiming for Zero Waste" plan to support the County's desired move away from trash incineration. The Waste Disposal Authority chose from their On-Call Consultants and hired a company that was already contracted for consulting services on the existing County incinerator, for \$500,000. This consultant's report stated that the County could not increase its recycling rate significantly, and that continuing to incinerate would be the safest, most cost-effective and environmentally friendly method of waste disposal. At a public meeting in January 2019, the County Executive [expressed concerns about this process](#) ("*I question whether the consultants we have are the right consultants to make the switch over we want to make. Is the consultant willing to work on it in the frame of mind that we want to do?... We only do so poorly because we tolerate people not abiding by what our goals are.*") and subsequently hired a small group of nationally recognized Zero Waste consultants to develop another report for a fraction of the cost, approximately \$30,000. This group has just concluded their report, and found that Montgomery County can significantly reduce its waste through expanded recycling, pay-as-you-throw programs, and organic waste composting. They also concluded that hauling residual waste to a well managed landfill would be safer and less expensive than continuing to incinerate. This is an example of the dramatically different outcomes that can result from a jurisdiction's choice of consultants for developing a long term strategic plan, and of the results that have come from using the Waste Disposal Authority's On-Call Consultants.

About HB161, the Northeast Maryland Waste Disposal Authority Sunset Act

What does the Northeast Maryland Waste Disposal Authority Sunset Act do?

This legislation tasks the Department of Legislative Services with evaluating the Waste Disposal Authority's efficiency, effectiveness, technical abilities, sufficiency of resources, governance, adherence to and accomplishment of legislative objectives, and statutory purpose (including whether its statutory purpose is appropriate and sufficient to meet Maryland's waste diversion and recycling goals). Legislative Services is to consider whether the continuation of the Waste Disposal Authority is necessary for the public interest, and report its findings to the legislature by December 2024, along with draft legislation to merge the Waste Disposal Authority into Maryland Environmental Service (as outlined in [MD. Natural Resources Code Ann. § 3-924](#)) and/or implement any other statutory changes recommended in its report.

What would change during and after the evaluation?

The Waste Disposal Authority will be able to continue its normal operations procuring contractors and services requested by member counties. The Waste Disposal Authority will also be able to continue servicing any bonds that are outstanding or unpaid, or any contracts that rely on the Waste Disposal Authority's bonding authority. This legislation pauses the Waste Disposal Authority's ability to issue bonds while that evaluation is completed, to avoid encumbering the implementation of recommendations resulting from the evaluation. (The Waste Disposal Authority [reported to the legislature on January 4](#) that it did not issue any bonds during 2021 or 2022, and has no plans to issue bonds during 2023.)

After December 2024, it will be up to the General Assembly to decide whether to implement any of the changes recommended in the Department of Legislative Services's report. The Department of Legislative Services might recommend to make no changes to the status quo; or to make some changes to the Waste Disposal Authority's statute regarding its purpose and operations; or to merge the Waste Disposal Authority into Maryland Environmental Service. If the latter, and if the General Assembly then passed legislation enacting that recommendation, Maryland Environmental Service would assume the Waste Disposal Authority's role in any outstanding projects as already described in statute.

How does the Northeast Maryland Waste Disposal Authority Sunset Act align with the recommendations of the State Transparency and Accountability Reform (STAR) Commission?

In 2021, a bipartisan state commission was tasked with reviewing and investigating the operations and structures of quasi-governmental agencies in Maryland, including the Waste Disposal Authority. The [STAR Commission's Final Report](#) submitted 31 recommendations and 4 best practices to the legislature for the operation of quasi-state agencies in Maryland, among them:

Agency Oversight

29. Each agency should undergo a periodic review conducted by the legislature, at least every eight years, similar to a “sunset review,” to assess statutory compliance with the mission and vision. The reviews should not endanger an agency’s current outstanding bonds or ability to use bonds.

31. When assessing an agency’s future and the creation of new agencies, refer to Appendix C, Questions for Determining Continuance or Creation of a QGA [quasi-governmental agency] for questions and factors that should be considered.

The STAR Commission noted that mission creep within quasi-governmental agencies was a major area of concern.

When these quasi-governmental agencies are created, it is typically because a gap is identified that is not currently served by the public or private sectors, and the agency is thus created to fill that need. There could, feasibly, come a time where the agency’s mission is achieved and the agency no longer needs to exist. The Bainbridge Development Corporation (BDC), for example, knew from the time it was created that it would not become a permanent fixture of the state and that they would, upon the completion of the development of the Bainbridge site, dissolve because their work is completed and will no longer need to provide their services. Not all agencies will fit the same mold as BDC, but a period review conducted by the legislature can help assess if mission creep has occurred, if the agency’s statute needs to be updated and amended, and what the status of the agency should be moving forward.

The STAR Commission outlined the elements that should be included in a sunset review (Appendix C), which it recommended be conducted for every quasi-governmental agency (QGA) in the state every eight years. These closely mirror the review requested of the Department of Legislative Services in the Northeast Maryland Waste Disposal Authority Sunset Act.

1. *Is there still a need for this QGA?*
 - *What was the problem or issue that resulted in the formation of this QGA? Does the problem or need still exist at the same level?*
 - *Is there another agency either private or governmental that could or is already providing this service?*
2. *Is this QGA continuing to fulfill legislative intent?*
 - *Has it remained faithful to its initial mission? If the agency has deviated, was it as per legislative directive?*
 - *Would this entity be created again under current circumstances?*
3. *Should this Agency continue as a QGA?*
 - *Should they continue as a QGA but with changes?*
 - *Are there financial consequences, such as bonding, if the agency was terminated?*

- *Are the benefits of the QGA worth the operational costs inherited by the state?*
4. *Should this Agency move back to a Governmental Agency?*
 - *Should this Agency become a private entity?*
 - *Should this Agency cease to operate?*
 5. *Has this Agency operated with transparency and accountability?*

Finally, the STAR Commission noted in Appendix E - Items Requiring Further Consideration and Discussion:

Moving Northeast Waste Disposal Authority into the Maryland Environmental Service. It was brought to the Commission's attention that the Northeast Maryland Waste Disposal Authority (NMWDA) has a provision within its statute (Natural Resources Section 3-924) that allows them to merge within the Maryland Environmental Service (MES). Given that, to the Commission's knowledge, NMWDA does not have any outstanding bonds, it may be appropriate to consolidate them into MES since their work overlaps. This could help eliminate any redundancies and integrate the efforts of both agencies to better serve the state.

The Waste Disposal Authority Sunset Act simply implements the STAR Commission's recommendation that each quasi-state agency in Maryland receive a sunset review every eight years, and affirms the special attention that the Commission paid to the Waste Disposal Authority.

Why is the Northeast Maryland Waste Disposal Authority Sunset Act necessary?

The Waste Disposal Authority has operated without significant statutory change since its founding in 1980, more than four decades ago. The STAR Commission recommended that every quasi-governmental agency in Maryland undergo a sunset review every eight years in order to evaluate whether the agency still needs to exist, and highlighted the Waste Disposal Authority as an agency likely in need of such an evaluation. HB161 will provide such an evaluation for the Waste Disposal Authority to ensure that Maryland's quasi-governmental agencies are providing the best value for Maryland's local governments and residents.