Department of Legislative Services

Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 995 (Delegate Niemann)
Economic Matters

Maryland Energy Administration - Sustainable Energy Regulated Entity Financing Program

This bill authorizes the Maryland Energy Administration (MEA) to create a Sustainable Energy Regulated Entity Financing Program. Under the program, sustainable energy regulated entities provide residential renewable energy installations and residential energy efficiency measures to residential property owners under qualified contracts that are recorded in land records and enforceable by imposition of a lien on the property. MEA must perform a feasibility study before developing and implementing the program and may develop and implement a test or pilot program. MEA must report to the General Assembly on the administration's progress in carrying out the requirements of the bill by December 31, 2012.

The bill takes effect July 1, 2012.

Fiscal Summary

State Effect: Special fund revenues and expenditures may increase significantly, possibly beginning in FY 2013, if MEA creates a Sustainable Energy Regulated Entity Financing Program. The revenues and expenditures reflect collection of fee revenue and the costs of contractual services and an additional assistant Attorney General position within MEA associated with implementing the program. The total cost of the program cannot be reliably estimated at this time.

Local Effect: The bill is not anticipated to materially affect local operations or finances.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Authorization of a Sustainable Energy Regulated Entity Financing Program

The bill authorizes MEA to create a Sustainable Energy Regulated Entity Financing Program to authorize sustainable energy regulated entities to provide residential renewable energy installations and residential energy efficiency measures to residential property owners under qualified contracts in accordance with the bill. If such a program is created, MEA must administer the program and adopt regulations covering various specified subjects relating to the program.

The bill is intended to promote energy conservation and the use of renewable energy by providing a secure form of long-term financing to facilitate the implementation of residential renewable energy installations and residential energy efficiency measures on or in residential properties.

MEA may authorize sustainable energy regulated entities to (1) enter into qualified contracts with individual residential property owners or groups of residential property owners; (2) directly bill each property owner that is a party to a qualified contract or owns property subject to a qualified contract; and (3) enforce payment by imposing a lien on property subject to the contract in accordance with the Maryland Contract Lien Act under Title 14, Subtitle 2 of the Real Property Article. The authorization of a sustainable energy regulated entity may be limited to a particular territory or specified residential renewable installation. More than one entity, however, may be authorized to operate in a particular territory or to offer specified residential renewable energy installation. MEA may revoke an authorization if it determines that the sustainable energy regulated entity is not complying with the terms of the authorization, there are an excessive number of consumer complaints, or the authorization is no longer serving the purpose of the bill.

MEA may enter into contracts with third parties to ensure that financing is provided only to projects that carry out the terms and conditions of qualified contracts and that the purposes of the program are fulfilled. MEA may also collect reasonable fees from sustainable energy regulated entities to carry out its duties under the bill and to ensure that the purposes of the program are fulfilled.

Before developing and implementing a program, MEA must perform a study to assess the feasibility of the program and the administration's abilities to fulfill its duties regarding the program. MEA also may develop and implement a test or pilot program.

Qualified Contracts

The bill establishes various requirements applicable to the qualified contracts sustainable energy regulated entities enter into with residential property owners. A qualified contract must be recorded in the land records in the county in which each property is located and the sustainable energy regulated entity must notify any party that holds a recorded mortgage or deed of trust on property subject to the qualified contract of the contract's existence. The bill authorizes a property owner to subject property to a qualified contract by recording or authorizing the recordation of the contract among the land records in the county where the property is located. A person who acquires property subject to a qualified contract assumes the obligation to pay the sustainable energy regulated entity in accordance with the rate and payment schedules in the contract.

A sustainable energy regulated entity may not enter into a qualified contract unless, for each property that would be subject to the contract: (1) property taxes and mortgage debt are current; (2) there are no outstanding or unsatisfied liens; and (3) there are no notices of default or other evidence of property-based debt delinquency for the lesser of three years immediately preceding the contract date or the length of time the property owner has owned the property.

MEA must establish (1) specified terms and conditions for qualified contracts, including interest rates, schedules, and rates for repayment; (2) eligibility requirements for property owners that account for the owner's ability to pay in a manner substantially similar to specified requirements for a mortgage loan; and (3) mechanisms for quality control and to ensure that savings to a property owner outweigh the costs of the qualified contract.

Current Law: Other programs established in statute that MEA is currently responsible for administering include the Maryland Strategic Energy Investment Program and the Jane E. Lawton Conservation Loan Program (JELLP). Revenues from carbon dioxide allowance auctions under the Regional Greenhouse Gas Initiative are allocated under the Maryland Strategic Energy Investment Program, a portion of which fund the majority of MEA's activities. JELLP is a revolving loan fund that provides low-interest loans to nonprofit organizations, local jurisdictions, and eligible businesses for energy efficiency and renewable energy projects. Among MEA's responsibilities listed in statute, is a responsibility to provide for, encourage, and assist, where practicable, public participation in the development and dissemination of energy programs.

Under the Maryland Contract Lien Act, a lien on a property may be created by a contract and enforced under the Act if the contract expressly provides for creation of a lien and describes the party entitled to establish and enforce the lien and the property against which the lien may be imposed. Generally, liens against real property take priority in the order in which they are recorded.

Background: The up-front costs of installing renewable energy and energy efficiency measures can be a barrier against consumers adopting such measures. In a recent Public Service Commission Order (No. 84569) relating to utilities' implementation of programs under the State's EmPower Maryland law (which targets reductions in electricity consumption and peak demand), the commission stated that "access to financing is critical for many consumers who must invest thousands of dollars to achieve significant energy savings in their homes and businesses." The commission also noted that "investments can often pay for themselves in a matter of years if financing rates are affordable." The commission found that the lack of convenient, accessible financing at favorable rates was a missing link in the utilities' programs and ordered a work group to be convened to analyze financing options and legislative or regulatory solutions.

State Fiscal Effect: Special fund revenues and expenditures may increase significantly, possibly beginning in fiscal 2013, if MEA creates a Sustainable Energy Regulated Entity Financing Program. These increases reflect fee revenue generated from sustainable energy regulated entities, as authorized under the bill, and expenditures for (1) contractual services to implement and oversee the program once it is established and (2) at least one additional attorney position within MEA (likely an assistant Attorney General) with knowledge of commercial lending law and mortgage transactions. Existing legal staff within MEA does not have the necessary expertise.

The magnitude of the potential increase in special fund revenues and expenditures cannot be reliably estimated at this time, due to uncertainty about the scope and cost of the third-party contract (or contracts) that MEA would enter into to implement and oversee the program. The cost of the salary and benefits for an assistant Attorney General alone would be at or above $100,000 annually. It is assumed, for the purposes of this fiscal and policy note, that the program would not go forward if it was determined that the fees generated from sustainable energy regulated entities or other available funds other than general funds would not be sufficient to cover MEA's costs. If, however, a program is established and fees are not sufficient to cover the costs of the program, funding would likely have to be covered with other MEA special funds, at the expense of other programs, or general funds.

MEA expects that it could conduct the feasibility study required under the bill with existing program development staff and other currently available resources such as technical assistance from the federal government and nonprofit organizations.

Small Business Effect: Creating a third-party financing mechanism for property owners to install sustainable energy products provides an additional way to finance the purchase and installation of such equipment. If additional property owners are able to install sustainable energy products as a result of the bill, small businesses involved with the manufacturing, distribution, and installation of sustainable energy products stand to benefit.

Additional Information

Prior Introductions: HB 658 of 2011, a similar bill, received an unfavorable report from the House Economic Matters Committee.

Cross File: None.

Information Source(s): Maryland Energy Administration, Office of the Attorney General (Consumer Protection Division), Public Service Commission, Department of Housing and Community Development, State Board of Contract Appeals, Judiciary (Administrative Office of the Courts), Department of Legislative Services

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Analysis by: Scott D. Kennedy

Direct Inquiries to:
(410) 946-5510
(301) 970-5510