

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1490 (Delegate Stewart, *et al.*)

Environment and Transportation and
Economic Matters

Environment - Building Energy Performance Standards and Greenhouse Gas
Emissions Reduction Targets (Clean Buildings Jobs Act of 2020)

This bill requires the Maryland Department of the Environment (MDE), in consultation with the Maryland Department of Labor (MDL) and the Maryland Energy Administration (MEA), to adopt regulations on monitoring and reporting greenhouse gas (GHG) emissions from “covered buildings.” The bill establishes related requirements for owners of covered buildings. Based on the information reported, MDE, in consultation with MDL and MEA, must then establish GHG emissions reduction targets and building energy performance standards, as specified. In order to assist owners in meeting the standards, the bill requires MEA, in consultation with MDE, to establish an incentive and financial assistance program, which may be funded through the Strategic Energy Investment Fund (SEIF). The bill also establishes specified fees and civil penalties for violations of the bill and directs any fees/fines collected to SEIF. Finally, the bill establishes a Building Energy Performance Task Force staffed by MDE. **The bill takes effect July 1, 2020; the task force provisions terminate June 30, 2024.**

Fiscal Summary

State Effect: General fund expenditures increase significantly, likely by more than \$1 million annually, beginning in FY 2021. Special fund expenditures from SEIF may increase as early as FY 2023. Special fund revenues to SEIF may increase as early as FY 2021.

Local Effect: Because locally owned and controlled buildings are exempt from the bill’s requirements, the bill is not anticipated to directly affect local government finances or operations.

Small Business Effect: Meaningful.

Analysis

Bill Summary: “Covered building” means a building in the State that has a gross floor area of 25,000 square feet or more, excluding the parking garage area. “Covered building” does not include (1) a building owned or controlled by a unit of federal, State, or local government or (2) a building designated as a historic property under federal, State, or local law.

Required Regulations and Associated Requirements for Covered Buildings

By January 1, 2021, MDE, in consultation with MEA and the Building Codes Administration within MDL, must adopt regulations on monitoring and reporting GHG emissions from covered buildings.

The owner of a covered building with a gross floor area of *50,000 square feet or more* must, in accordance with the regulations adopted under the bill, (1) beginning January 1, 2021, monitor GHG emissions from the covered building and (2) by July 1, 2022, and annually thereafter, report to MDE on the level of GHG emissions from the covered building during the immediately preceding calendar year.

The owner of a covered building with a gross floor area of *less than 50,000 square feet* must, in accordance with the regulations adopted under the bill, (1) beginning January 1, 2022, monitor GHG emissions from the covered building and (2) by July 1, 2023, and annually thereafter, report to MDE on the level of GHG emissions from the covered building during the immediately preceding calendar year.

Additional Regulations and Building Energy Performance Standards

Based on the required GHG monitoring reports submitted pursuant to the bill, by October 1, 2024, MDE, in consultation with MEA and the Building Codes Administration within MDL, must establish by regulation (1) baselines of the current average median GHG emissions levels for different categories of building, including commercial, industrial, and residential; (2) five-year GHG emissions reduction targets for different sizes and categories of building, as specified; and (3) building energy performance standards for different sizes and categories of building, as necessary to achieve the GHG emissions reduction targets, as specified. The GHG emissions reduction targets for covered buildings must be set with a goal of achieving a 40% reduction in GHG emissions from covered buildings from 2006 levels by 2030 and an 80% reduction in GHG emissions from covered buildings from 2006 levels by 2050, as specified.

The building energy performance standards adopted under the bill must require that at least 75% of GHG emissions reductions required under the bill be achieved through energy

efficiency measures, on-site fuel switching, and building technologies, rather than through the purchase of renewable energy credits or other off-site measures.

MDL must update Maryland Building Performance Standards (MBPS) as necessary to conform to the building energy performance standards adopted pursuant to the bill.

Unless waived by MDE, the owner of a covered building must ensure that the building meets all applicable building energy performance standards adopted pursuant to the bill by the dates specified in MDE regulations. MDE may waive compliance with the building energy performance standards on a showing by the owner of a covered building that (1) the owner is bankrupt or in severe financial distress; (2) the covered building has undergone a recent change in ownership; (3) the covered building is vacant, subject to major renovation, or subject to pending demolition; or (4) other extenuating circumstances exist, as specified. Generally, MDE may not waive compliance with the standards for more than three years. However, MDE may waive compliance with the standards for a period longer than three years for residential buildings that meet specified conditions relating to low-income housing. MDE must adopt regulations to implement the bill's provisions relating to building energy performance standards.

Incentive and Financial Assistance Program

MEA, in consultation with MDE, must establish a program to provide incentives and financial assistance to qualifying covered building owners in order to meet the building energy performance standards established under the bill. The incentive and financial assistance program may be paid for with funds from SEIF within MEA; the bill makes corresponding changes to provisions governing the use of funds from SEIF. By October 1, 2021, MEA must report to the Governor and the General Assembly on whether additional funding sources are necessary to implement the program.

Penalties

A person who violates the bill's provisions that require covered building owners to implement applicable building energy performance standards must pay an alternative compliance fee to MDE, as specified. A person who violates any other provision of the bill, or a regulation adopted pursuant to the bill, is subject to a civil penalty of up to \$500 per violation. Fines and fees collected under these provisions must be deposited into SEIF.

Building Energy Performance Task Force

The bill establishes a Building Energy Performance Force to advise MDE on the creation and implementation of the bill's provisions and to study and make recommendations

regarding (1) regulations and amendments to regulations adopted by MDE pursuant to the bill; (2) the development of complementary programs and policies aimed at reducing GHG emissions from the building sector; and (3) metrics and recommendations for achieving GHG emissions reductions from historic properties in a way that does not compromise the historic integrity of the building. The task force must report its preliminary findings and recommendations to the Governor and the General Assembly by October 1, 2021. A final report is due by October 1, 2023.

MDE must provide staff for the task force. A member of the task force may not receive compensation but is entitled to standard reimbursement for expenses.

Current Law/Background:

Maryland's Greenhouse Gas Emissions Reduction Act

The Greenhouse Gas Emissions Reduction Act, originally enacted in 2009 and made permanent and expanded in 2016, was enacted in light of Maryland's particular vulnerability to the impacts of climate change. Under the Act, the State must develop plans, adopt regulations, and implement programs to reduce GHG emissions by 25% from 2006 levels by 2020 and must further reduce GHG emissions by 40% from 2006 levels by 2030; the 2030 reduction requirement terminates December 31, 2023.

Strategic Energy Investment Fund

The Strategic Energy Investment Program within MEA has the stated purpose of decreasing energy demand and increasing energy supply to promote affordable, reliable, and clean energy to fuel Maryland's future prosperity. The program is supported by SEIF, which receives, among other funding, auction proceeds from the State's participation in the Regional Greenhouse Gas Initiative (RGGI). SEIF may be used to, among other things, invest in the promotion, development, and implementation of climate change programs directly related to reducing or mitigating the effects of climate change. The proceeds received by SEIF from RGGI are subject to statutory allocations.

Maryland Building Performance Standards

MDL is required to adopt, as MBPS, the most recent version of the International Building Code (IBC), including the International Energy Conservation Code (IECC), along with applicable modifications authorized in Title 12 of the Public Safety Article. Within 18 months of the release of each new version of IBC, MDL is required to review the new version, consider modifications, and adopt specified modifications related to energy conservation and efficiency. MDL is prohibited from adopting any modification that is more stringent than IBC, except that an energy conservation requirement may be more

stringent than IECC. MDL and local governments may also adopt by regulation the International Green Construction Code.

Chapter 673 of 2018 transferred administration of MBPS from the Department of Housing and Community Development to MDL. MDL currently incorporates by reference the 2018 IBC, including the 2018 IECC, with modifications, as MBPS. In general, the standards apply to all buildings and structures within the State for which a building permit application is received by a local government. The International Code Council (ICC) develops and publishes IBC. ICC was established in 1994 as a nonprofit organization dedicated to developing a single set of comprehensive and coordinated national model construction codes, including IBC, which has been adopted by all 50 states as well as thousands of local jurisdictions.

MDL advises that IBC and IECC are updated every three years and that it takes approximately 30 months to adopt both of the codes at the State and local levels.

State Expenditures: The bill results in a significant increase in State expenditures for MDE and MEA. Some of these effects cannot be quantified at this time; however, the effects on both agencies are discussed below.

Maryland Department of the Environment – Administrative Costs

MDE estimates that its general fund expenditures increase by \$1.9 million in fiscal 2021, increasing to \$2.4 million by fiscal 2025, to hire 28 additional employees (20 environmental compliance specialists, 2 assistant attorneys general, 2 natural resource planners, 2 regulatory and compliance engineers, 1 administrative specialist, and 1 paralegal) for a new division within MDE to (1) develop the required monitoring and reporting standards and building energy performance standards; (2) conduct outreach and coordinate with other affected agencies; (3) develop all required regulations; (4) set GHG emissions reduction targets; (5) participate in the task force; and (6) otherwise enforce and implement the bill. MDE advises that its estimate is based on an assumption that nearly 500,000 buildings are likely affected by the bill's requirements. MDE's estimate also includes \$75,000 in fiscal 2021 and \$100,000 annually thereafter in contractual services, as well as costs to hire a contractual employee to staff the task force. The Department of Legislative Services (DLS) concurs that general fund expenditures for MDE increase significantly to hire additional staff. However, DLS is unable to independently verify the number of additional staff needed at this time. *For informational purposes*, for every environmental compliance specialist hired, general fund expenditures increase by more than \$60,000 annually.

Maryland Energy Administration – Administrative Costs

General fund expenditures for MEA increase by \$262,001 in fiscal 2021, which accounts for a 90-day start-up delay. This estimate reflects the cost of hiring one program manager and one program administrator to (1) assist with the development of the required standards; (2) consult with MDE; (3) collect required data; (4) participate in the task force; and (5) establish and implement the incentives and financial assistance program. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses, including a contract with a third party for analysis and data compilation services.

Positions	2
Salaries and Fringe Benefits	\$138,768
Third Party Contracting Costs	112,500
Other Operating Expenses	<u>10,733</u>
Total FY 2021 MEA Admin. Expenditures	\$262,001

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses, including continued contractual costs.

Maryland Energy Administration – Incentives and Financial Assistance Program

Special fund expenditures from SEIF may increase to provide incentives and financial assistance to qualifying owners of covered buildings. However, there are several statutorily mandated funding priorities for SEIF funds under current law. The magnitude of any additional SEIF expenditures resulting from the bill depend on (1) the specifics of the incentives and financial assistance program developed under the bill; (2) the level of SEIF funding available for the program; and (3) whether other funding sources are identified and utilized instead. Costs associated with this program likely do not begin before fiscal 2023, since the standards are developed pursuant to the monitoring reports which are not *required* to be reported to MDE until July 1, 2022.

Maryland Department of Labor

MDL can likely consult with MDE and MEA, and update MBPS as necessary, with existing resources. However, if MDL’s role in implementing the bill requires more robust participation, MDL may need to hire additional staff.

State Revenues: Special fund revenues for SEIF may increase due to the bill’s penalty provisions. Specifically, the bill establishes an alternative compliance fee for a violation of the bill’s provisions relating to the building energy performance standards as well as a civil penalty of up to \$500 for a violation of the bill’s other provisions. Any fee or fine collected pursuant to these provisions must be deposited into SEIF. Although the total amount of any

fees or fines collected cannot be predicted, it is reasonable to assume that any alternative compliance fees collected under the bill are likely not significant, since the bill requires that the fee must be set at a level such that the cost of noncompliance exceeds the cost of compliance.

Small Business Effect: The bill may result in a significant increase in expenditures for any small business that owns a covered building and must implement the required GHG emissions monitoring and reporting (beginning as early as fiscal 2021), implement energy improvements to meet the GHG emissions reduction targets established pursuant to the bill, and comply with the building energy performance standards established under the bill. Affected small businesses likely do not need to implement the GHG emissions reductions and building standards before fiscal 2023 at the earliest, since the standards will be developed after the monitoring reports are submitted (which are not due to MDE until July 1, 2022). Costs incurred by affected building owners may be at least partially offset by financial assistance provided from MEA's incentives and financial assistance program.

Small businesses that provide GHG emissions monitoring as well as companies that build and implement GHG emissions reduction services for buildings may benefit significantly from an increase in the demand for their services under the bill.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Anne Arundel, Charles, and Frederick counties; Maryland Association of Counties; City of Havre de Grace; Maryland Municipal League; Maryland Department of the Environment; Maryland Department of Labor; Maryland Department of Transportation; Maryland Energy Administration; Department of Legislative Services

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