HB 336

Department of Legislative Services

Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 336 (The Speaker, *et al.*) (By Request - Administration)
Economic Matters

Renewable Energy Development and Siting (REDS) – Evaluations and Tax and Fee Exemptions

---

This Administration bill (1) requires the Maryland Department of the Environment (MDE) to waive application fees for the Voluntary Cleanup Program (VCP) for a qualifying applicant who intends to use eligible property to generate clean or renewable energy and (2) expands the definition of "eligible property," as it applies to VCP. The bill also (1) exempts specified public-private partnerships (P3) formed for the generation of clean or renewable energy from the public service company franchise tax and (2) clarifies that the Public Service Commission (PSC) has authority to evaluate specified changes to certain clean or renewable energy generating stations.

Fiscal Summary

State Effect: Special fund revenues decrease by $45,000 in FY 2021 and by $60,000 annually thereafter due to the VCP fee waiver. General fund revenues decrease beginning in FY 2021 due to the franchise tax exemption; the Governor's proposed FY 2021 budget assumes a general fund revenue loss of $57,156 due to the exemption. Expenditures are not materially affected.

(in dollars)	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
GF Revenue	(-)	(-)	(-)	(-)	(-)
SF Revenue	($45,000)	($60,000)	($60,000)	($60,000)	($60,000)
Expenditure	0	0	0	0	0
Net Effect	(-)	(-)	(-)	(-)	(-)

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

Local Effect: Potential decrease in local expenditures, as discussed below. Local revenues are not affected.

Small Business Effect: The Administration has determined that this bill has a meaningful impact on small business (attached). The Department of Legislative Services (DLS) concurs with this assessment.

Analysis

Bill Summary:

Voluntary Cleanup Program

The bill requires MDE to waive the existing application fees for participation in VCP if an applicant certifies that the intended use of the eligible property is to generate clean or renewable energy. MDE must adopt regulations to establish criteria for determining whether an applicant has made such a certification. If an owner of an eligible property that has limited permissible uses wants to change the use of the eligible property, the owner is liable for any application fees waived under the bill if the eligible property is not in compliance with the certification.

The bill expands the definition of "eligible property," as it applies to VCP, to include sites listed on the Superfund Enterprise Management System. For the purposes of evaluating an application for participation in VCP, any property identified in the Superfund Enterprise Management System as of October 1, 1997, is presumed to have been initially contaminated on or before October 1, 1997.

Public Service Commission

The bill explicitly authorizes PSC to evaluate any material change to a clean or renewable energy generating station for which a certificate of public convenience and necessity (CPCN) is required, including any change to the capacity of the generating station, the engineering design of the generating station, the design of the generating station's foundation or support structure, the geographic coordinates of the generating station, the vertical specifications of the generating station, the generating station's commercial operation date, and the decommissioning plan for the generating station.

Franchise Tax Exemption

The bill exempts a public service company that is a P3 formed for the generation of clean or renewable energy from the existing public service company franchise tax if (1) 30% or more of the electricity generated through the P3 is purchased by the public partner and (2) the clean or renewable energy generating station is sited on an eligible clean and renewable energy generation site, as determined by MDE, including rooftops, parking lots, landfills, brownfield sites, VCP sites, reclaimed mines, Superfund sites, and sediment or retention ponds. MDE is authorized to adopt regulations regarding the determination of eligible clean or renewable energy generation sites.

Current Law:

Voluntary Cleanup Program

VCP, which is administered by MDE, was established in 1997 to encourage the investigation of eligible brownfields properties, to protect public health and the environment, to accelerate the cleanup of "eligible properties," and to provide predictability and finality to the cleanup process. VCP works in conjunction with the Brownfields Revitalization Incentive Program (BRIP), a program administered by the Department of Commerce (Commerce) that provides economic incentives such as loans, grants, and property tax credits to clean up and develop certain properties.

An "eligible property" is a property that is contaminated or perceived to be contaminated, and includes (1) a site under active enforcement if all applications filed in connection with the property are filed by inculpable persons and any response action plan and cleanup criteria approved by MDE pursuant to VCP is at least as protective of public health and the environment as the requirements of any outstanding active enforcement action and (2) sites listed on the federal Comprehensive Environmental Response, Compensation, and Liability Information System. For purposes of VCP, any property identified in that information system in accordance with the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) as of October 1, 1997, is presumed to have been contaminated on or before that date.

VCP provides owners or purchasers of a contaminated site liability relief if cleanup goals are met. Eligible applicants may be either responsible persons (as defined under the Controlled Hazardous Substances Law) or prospective owners who have not previously owned the property and did not cause or contribute to contamination at the property. Eligible parties that want to participate must submit an application describing a proposed voluntary cleanup project that specifies the proposed cleanup criteria for a contaminated site and the future use of the site.

The initial application fee is $6,000, but MDE may reduce that fee on a demonstration of financial hardship. An application fee of $2,000 applies for each application submitted subsequent to the initial application for the same property. An application fee of $2,000 also applies for each application submitted subsequent to the initial application for contiguous or adjacent properties that are part of the same planned unit development or a similar development plan. All application fees are paid into the Voluntary Cleanup Fund.

State Superfund Program and Brownfield Revitalization Incentive Program

In addition to VCP, the Controlled Hazardous Substance Environment Division within MDE administers the State's Superfund program. The program oversees assessment and cleanup of hazardous waste sites by responsible persons. The program also conducts assessment and cleanup of hazardous waste sites when no responsible person exists for a site or when the person is unable or unwilling to do the work.

BRIP, administered by Commerce, provides financial assistance to conduct environmental assessments of sites that intend to enter either VCP or the Oil Control Program and for the remediation of eligible brownfields sites. Commerce also certifies sites as qualified brownfields sites, making them eligible for property tax credits in participating jurisdictions. Financial incentives under BRIP include (1) grants and loans to cover up to 50% of the cost of performing environmental assessments at a brownfield site if the applicant and site are eligible for participation in VCP; (2) grant and loan assistance for inculpable parties for up to 20% of the cost of remediation for a qualified brownfield site participating in VCP or implementing a corrective action plan; and (3) real property tax credits for inculpable parties that have completed VCP or a corrective action plan at a Commerce-designated qualified brownfield site.

Public Service Commission

PSC has jurisdiction over each public service company that engages in or operates a utility business in the State, and PSC is required to supervise and regulate public service companies under its jurisdiction. A public service company includes an electricity supplier and a gas supplier. Among other things, PSC must initiate and conduct any investigation necessary to execute its powers or perform its duties and may (1) examine the records of a public service company; (2) compel production of the records by subpoena; and (3) require verified copies of the records to be filed with the commission.

Generally, a person may not begin construction in the State of a generating station, overhead transmission line, or a qualified generator lead line unless a CPCN is first obtained from PSC. The application process involves notifying specified stakeholders, public hearings, the consideration of recommendations by State and local government entities, and the project's effect on various aspects of the State infrastructure, economy, and environment.

There are three general conditions under which a person constructing an electric generating station may apply to PSC for an exemption from the CPCN requirement.

- the facility is designed to provide on-site generated electricity, the capacity is up to 70 megawatts, and the excess electricity can be sold only on the wholesale market pursuant to an interconnection, operation, and maintenance agreement with the local electric company;

- at least 10% of the electricity generated is consumed on-site, the capacity is up to 25 megawatts, and the excess electricity is sold on the wholesale market pursuant to an interconnection, operation, and maintenance agreement with the local electric company; or

- the facility is wind powered and land based, the capacity is up to 70 megawatts, and the facility is no closer than a PSC-determined distance from the Patuxent River Naval Air Station, among other requirements.

However, PSC must require a person that is exempted from the CPCN requirement to obtain approval from the commission before the person may construct a generating station as described above. The application must contain specified information that PSC requires, including proof of compliance with all applicable requirements of the independent system operator.

Public Service Company Franchise Tax

Persons engaged in a telephone business in Maryland or the delivery, transmission, or distribution of electricity or natural gas in Maryland must pay the public service company franchise tax. For telephone, electric, and gas companies, a tax is imposed measured by the company's gross receipts. Gross receipts are defined as the total operating revenues of the public service companies, excluding revenue derived from an activity other than a telephone, electric, or natural gas business. Gross receipts do not include uncollectible revenue, receipts from a service or product resold by another public service company that is subject to the tax, or gross receipts from the sale of electricity or natural gas. For electric and gas companies, a second tax is imposed measured by the kilowatt-hours of electricity or therms of natural gas delivered for final consumption in the State.

The rate for the gross receipts component of the tax is 2% of gross revenues. The rate of the distribution tax imposed on electric and gas companies is 0.062 cents per kilowatt-hour for electricity delivered for final consumption and 0.402 cents per therm for natural gas delivered for final consumption. The State Department of Assessments and Taxation's Business Property Valuation Program is responsible for administering the franchise tax, and tax revenues are distributed to the general fund. According to the Board of Revenue Estimates, in fiscal 2019, public service company franchise tax revenues totaled $146.3 million.

Background: The federal Superfund program was created as a result of CERCLA, which was enacted in 1980 and amended by the Superfund Amendments and Reauthorization Act of 1986. Superfund is a program administered by the U.S. Environmental Protection Agency (EPA) to locate, investigate, and clean up the worst hazardous waste sites throughout the United States. These sites include abandoned warehouses, manufacturing facilities, processing plants, and landfills. EPA's Superfund Enterprise Management System database is the official repository for site and nonsite specific Superfund data in support of CERCLA. It contains information on hazardous waste site assessment and remediation from 1983 to the present.

Governor Hogan established the Governor's Task Force on Renewable Energy Development and Siting pursuant to Executive Order 01.01.2019.09. The task force was charged with, among other things, accelerating the siting of clean and renewable energy projects in commercial, developed, industrial, and public settings, including brownfields, closed mines, landfills, parking lots, rights-of-ways, and rooftops. The task force issued an interim report in December 2019. This bill implements one of the preliminary recommendations of the task force, which is to eliminate application fees and offer tax credits for clean energy development for individuals and entities that utilize specified sites, including brownfield sites and sites that receive a VCP signoff. The task force's final report is due in August 2020.

State Revenues: Special fund revenues for the Voluntary Cleanup Fund decrease by an estimated $45,000 in fiscal 2021 and by an estimated $60,000 annually thereafter. This estimate accounts for the bill's October 1, 2020 effective date, and assumes that 10 VCP applications qualify for a waiver of the $6,000 initial application fee annually. This revenue estimate assumes that the bill does not materially affect the overall number of VCP applications submitted annually. For reference, MDE advises that VCP typically receives between 40 and 50 applications annually. According to MDE, VCP application fee revenues total approximately $300,000 annually, but can fluctuate depending on whether applicants need to submit additional fees for subsequent applications.

General fund revenues decrease due to the bill's exemption from the 2% public service company franchise tax for qualifying P3s formed for the generation of clean or renewable energy. The amount of any general fund revenue decrease cannot be reliably estimated at this time; it depends on the number of qualifying P3s that are eligible for the franchise tax exemption and the amount of any qualifying partnership's gross receipts. The Governor's proposed fiscal 2021 budget assumes a general fund revenue loss of $57,156 due to the franchise tax exemption.

Local Expenditures: Local government expenditures decrease for any jurisdiction developing a site for clean or renewable energy generation that is eligible for a waiver from the VCP application fee.

Additional Comments: Any entity that participates in a P3 for a clean or renewable energy project may benefit from a decrease in overall project costs.

DLS notes that, according to PSC, Maryland offshore wind projects currently sited on federal waters are *not* subject to the CPCN review process and, thus, would not be affected by the bill. PSC also notes that it is unclear whether any generating stations for which the PSC has granted a CPCN waiver would fall within the scope of the bill.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 281 (The President, *et al.*) (By Request - Administration) - Education, Health, and Environmental Affairs and Budget and Taxation.

Information Source(s): Maryland Department of the Environment; Department of Natural Resources; State Department of Assessments and Taxation; Maryland Energy Administration; Office of People's Counsel; Public Service Commission; Department of Commerce; U.S. Environmental Protection Agency; Department of Legislative Services

Fiscal Note History: First Reader - February 7, 2020
mr/lgc

Analysis by: Kathleen P. Kennedy

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

ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Renewable Energy Development and Siting (REDS) – Evaluations and Tax and Fee Exemptions

BILL NUMBER: HB 336 / SB 281

PREPARED BY: Andrew Cassilly

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

___ WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

X WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

This legislation will result in a potential of up to $10,000 of fee removal for small businesses who participate in the Voluntary Cleanup Program if the contaminated property site is to generate clean energy. Maryland Department of the Environment's Voluntary Clean-Up Program is responsible for overseeing the voluntary cleanup of properties contaminated with hazardous substances. There are several department fees associated with this program that will be eliminated for these participants.