

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

House Bill 1296
Economic Matters

(Delegates Wilson and Crosby)

Education, Energy, and the Environment

Electricity - Offshore Wind Projects - Alterations

This bill requires the Public Service Commission (PSC), on June 1, 2024, to open a revised Round 2 offshore wind project proceeding that is limited to evaluating revised project schedules, sizes, or pricing for a previously approved Round 2 project. The bill also allows any Round 1 offshore wind project to seek PSC approval to amend its previously approved Round 1 project order to increase the maximum amount of offshore wind renewable energy credits (ORECs) and modify its project schedule. Both processes are subject to existing ratepayer protections, although the Round 1 process requires consideration of changes in economic conditions since the Round 1 project awards. An existing requirement for the Department of General Services (DGS) to issue a procurement for offshore wind energy is modified to, among other changes, (1) remove the 5.0 million megawatt-hour annual limit and (2) require a second procurement. PSC must also, with the assistance of specified State entities, develop a plan for achieving a total of 8,500 megawatts of offshore wind energy capacity by 2031 and submit a report on the plan to the General Assembly by January 1, 2025. **The bill takes effect June 1, 2024.**

Fiscal Summary

State Effect: PSC can likely handle the bill's requirements with existing budgeted resources; if not, special fund expenditures (and corresponding revenues) increase minimally due to additional consultant costs in FY 2024 and/or 2025. General/special fund expenditures for the Department of Natural Resources (DNR) may increase by up to \$350,000 in FY 2025 for consultant costs. General fund expenditures for DGS increase by \$400,000 in total in FY 2025 and 2026. The net effect on State expenditures due to modifying the existing DGS offshore wind energy procurement process is unknown, but potentially significant, as discussed below. The effect on electricity rates is discussed in the Additional Comments section below.

Local Effect: The bill does not directly affect local government finances or operations. The effect on electricity rates is discussed in the Additional Comments Section below.

Small Business Effect: Minimal.

Analysis

Bill Summary:

Revised Round 2 Offshore Wind Project Proceeding

On June 1, 2024, PSC must open a revised Round 2 offshore wind project proceeding that is limited to evaluating revised project schedules, sizes, or pricing, including OREC pricing, for a previously approved Round 2 offshore wind project.

Any previously approved Round 2 offshore wind project may submit a revised plan for the project by filing an application with PSC. The application for a revised Round 2 offshore wind project must be limited to addressing revised project schedules, sizes, or pricing, including OREC pricing.

On receipt of an application for approval of a revised Round 2 offshore wind project, PSC must conduct an expedited review of the application. Unless extended by mutual consent of the parties, PSC must approve, conditionally approve, or deny an application within 90 days after the application is filed and found by PSC to be administratively complete.

Generally, an application for a revised Round 2 offshore wind project must be subject to all criteria in current law for Round 2 offshore wind projects. However, an application for a revised Round 2 offshore wind project is not subject to the requirement to provide \$6.0 million to the Maryland Offshore Wind Business Development Fund upon PSC approval.

If, in a revised Round 2 offshore wind project proceeding, PSC reviews multiple reasonable proposals meeting the requirements for Round 2 offshore wind projects, PSC must issue orders approving the revised Round 2 offshore wind projects necessary to facilitate as much energy capacity as is consistent with the Round 2 offshore wind project ratepayer protections under current law, including at least 800 megawatts of capacity from revised Round 2 offshore wind projects, if practicable. PSC must do so even if the revised Round 2 offshore wind project applications may result in lower total energy capacity awarded than was previously awarded to the revised Round 2 offshore wind project in its previously approved application.

PSC may not approve an application for a revised Round 2 offshore wind project unless the application includes commitments for in-state expenditures and investments in a local supply chain that PSC determines are reasonably related to the size and requirements of the project.

The Maryland Energy Administration (MEA) must have access to all confidential information produced by any party relating to a revised Round 2 offshore wind project, subject to a confidentiality agreement.

Round 1 Offshore Wind Project Order Amendment

In order to maximize the amount of renewable energy generated by a Round 1 offshore wind project, any Round 1 offshore wind project may seek approval from PSC to amend its previously approved Round 1 offshore wind project order to (1) increase the maximum amount of ORECs sold under the previous order, consistent with the Round 1 offshore wind project ratepayer protections under current law, and (2) modify its project schedule.

PSC may approve a request for an increased amount of ORECs sold under a previously approved Round 1 offshore wind project order on a showing that:

- the unit pricing of the additional ORECs does not exceed the pricing under the previously approved Round 1 offshore wind project order; and
- the Round 1 offshore wind project is in compliance with the ratepayer protection provisions required for Round 1 offshore wind projects, taking into consideration changes in economic conditions since the original Round 1 offshore wind project awards.

Offshore Wind Procurement by Department of General Services

An existing requirement for DGS to issue a procurement for offshore wind energy is modified to (1) remove the 5.0 million megawatt-hour annual limit; (2) establish a process for a second procurement; (3) require the issuance of draft procurements; and (4) require the State to incorporate specified contract terms to facilitate low-cost project development and traditional project financing terms. Other requirements are unchanged.

More specifically, the State must issue a draft solicitation for procurement of offshore wind energy for public comment and review by June 1, 2024, prior to the existing requirement to issue the procurement by July 31, 2024. As under current law, the State may enter into a contract or contracts for the procurement by September 1, 2025, although the State may modify that date if an unforeseen circumstance adversely affects the procurement submission process.

The State must then issue a second procurement for offshore wind energy by December 31, 2025 (with a draft issued for public comment and review by September 1, 2025). The State may enter into a contract or contracts for the second procurement by March 31, 2027, although the State may, again, modify that date.

The State must incorporate contract terms to facilitate low-cost project development and traditional project financing terms, including (1) terms that waive the automatic termination clause required under § 13-217 of the State Finance and Procurement Article; (2) terms that establish remedies to reimburse costs incurred by the contractor directly attributable to the failure of the State to appropriate funds for the contract; and (3) any other appropriate mechanisms to ensure that offshore wind energy projects that meet the terms of the contract will have certainty of payment through the duration of the contract.

Plan for Achieving 8,500 Megawatts of Offshore Wind Capacity

PSC, with the assistance of MEA, DGS, and other interested State units, must develop a plan for achieving a total of 8,500 megawatts of offshore wind energy capacity by 2031. The plan must include a schedule of offshore wind energy procurements and proposed amounts of offshore wind energy for procurement through 2031. It may include recommendations on multijurisdictional offshore wind energy procurements and any additional offshore wind energy procurement recommendations. PSC must submit a report on the plan to the General Assembly by January 1, 2025.

Current Law:

Round 1 and Round 2 Offshore Wind Energy Projects

Pursuant to Chapter 3 of 2013, under the State Renewable Energy Portfolio Standard (RPS), State electricity sales must include an amount derived from offshore wind energy beginning in 2017. The amount is set by PSC each year, based on the projected annual creation of ORECs by qualified offshore wind projects, and may not exceed 2.5% of total retail sales. Chapter 757 of 2019 bifurcated the application and approval process for offshore wind into “Round 1” (the process established by Chapter 3) and a “Round 2” process to allow for new applications with different specifications. PSC may also provide for additional application periods.

Ratepayer impacts in Round 1 were limited to \$1.50 per month (in 2012 dollars) for residential customers and 1.5% for nonresidential customers over the duration of the OREC pricing schedule. Ratepayer impacts in Round 2 were limited to \$0.88 per month (in 2018 dollars) for residential customers and 0.9% for nonresidential customers over the duration of the OREC pricing schedule.

Offshore Wind Energy Procurement by the Department of General Services

Chapter 95 of 2023 established a State goal of reaching 8,500 megawatts of offshore wind energy by 2031. The Act also:

- required PSC to take specified actions related to regional transmission system upgrades for offshore wind;
- required DGS to issue a competitive sealed procurement solicitation and authorized the department to enter into at least one contract for a power purchasing agreement (PPA) to procure up to 5.0 million megawatt-hours annually of offshore wind energy and associated renewable energy credits (RECs) from one or more qualified offshore wind projects; and
- authorized Round 1 and Round 2 developers to apply to PSC for a full or partial exemption from the requirement to pass along 80% of certain federal benefits to ratepayers.

DGS must issue the offshore wind energy procurement by July 31, 2024. The State may enter into a contract or contracts for the procurement by September 1, 2025, although the State may modify that date if an unforeseen circumstance adversely affects the procurement submission process. Each PPA must have a minimum term of 20 years.

The State must use the energy procured under Chapter 95 to meet the State's energy needs and retire the associated RECs to meet its obligations under the State's RPS and the Climate Solutions Now Act. After those requirements have been met, the State must offer for sale any energy or RECs remaining on the competitive wholesale power market operated by PJM, through bilateral sales to credit-worthy counterparties, or into REC markets.

Termination Provisions on Multi-year Procurement Contracts

In general, State procurement contracts are subject to annual appropriations. Contracts that span multiple years must include clauses allowing for the termination of the contract in the event that funds are not appropriated to pay for the contract in a given year. The clause must discharge both parties from future performance but not from existing obligations. Under these circumstances, the contract terminates either on the last day of the fiscal year for which money is appropriated or the date provided in the contract's termination clause, whichever is earlier. Units that terminate multi-year contracts under these conditions must reimburse the contractor for the reasonable value of any nonrecurring costs that were not amortized in the price of supplies or services delivered under the contract.

However, the Board of Public Works (BPW), on the recommendation of the Secretary of General Services, may waive the requirement for a mandatory termination clause for a multi-year State contract to procure Tier 1 or Tier 2 renewable energy for the State. In

determining whether to grant a waiver, BPW must consider the effects of its decision on the ability of the energy vendor to obtain financing for the renewable energy generation project.

State Fiscal Effect: PSC can likely handle the bill's requirements with existing budgeted resources; if not, special fund expenditures increase minimally for additional consultant costs in fiscal 2024 and/or 2025 – and special fund revenues increase correspondingly from assessments imposed on public service companies.

General/special fund expenditures for DNR increase by up to \$350,000 in fiscal 2025 for additional consultant costs to the extent that DNR chooses to participate in the offshore wind capacity plan development. Costs for DNR may be less, depending on the scope of the plan and other resources available from participating agencies. MEA can assist PSC with existing budgeted resources.

General fund expenditures for DGS increase by approximately \$400,000 in total in fiscal 2025 and 2026 for consultant costs associated with a second procurement requirement and to assist PSC with developing the offshore wind capacity plan. While DGS advises that it requires an additional administrative staff to assist in the development of the plan and to coordinate the various potential procurement contracts, the fiscal and policy note for Chapter 95 already accounted for two additional DGS staff for the original procurement, which have not been hired. As such, this analysis does not include additional staff costs.

The net effect on State expenditures (all funds) for electricity due to modifying the existing DGS offshore wind energy procurement process is unknown, but potentially significant. The bill removes the overall annual limit on energy that may be procured, although the current 5.0 million megawatt-hour annual limit is more than three times the State government's annual energy usage, so any energy and RECs procured under the bill in excess of the current limit are assumed to be resold by DGS. The bill also requires a second procurement, increasing the likelihood of the State ultimately entering into one or more PPAs for offshore wind energy. Still, the possibility remains that DGS does not enter into a PPA, even under the bill. Nevertheless, the size of the potential PPAs and their minimum 20-year duration means that State finances may be significantly affected. The effect, if any, likely occurs no earlier than fiscal 2026.

Additional Comments: A PSC [fact sheet](#) contains relevant information on Round 1 and Round 2 project approvals, costs, and timelines under the implementation of the two Acts. However, one of the two developers, Orsted, [announced](#) in January 2024 that it has withdrawn from PSC orders approving its Skipjack 1 and 2 projects.

PSC advises that there are three potential ratepayer impact scenarios based off recent events (the Skipjack/Orsted withdrawal) and the bill, two resulting in a decrease in ratepayer impact and one resulting in no change.

- Scenario 1: If no changes are made to the OREC's awards, then the ratepayer impacts will decrease from what was anticipated from the original Round 1 and Round 2 OREC awards.
- Scenario 2: If a revised application is approved and it requires the same ratepayer impact cap as what was vacated by Skipjack/Orsted, then ratepayer impacts will remain at the same level as what was anticipated with the original Round 1 and Round 2 OREC awards.
- Scenario 3: If a revised application is approved and it requires less ratepayer impact cap space than the original Round 1 and Round 2 OREC awards, then ratepayer impacts will decrease from what was anticipated from the original Round 1 and Round 2 OREC awards.

The Department of Legislative Services also notes that PSC is authorized to open additional application periods under current law, subject to all existing requirements.

Additional Information

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

Designated Cross File: SB 1161 (Senators Feldman and Hester) - Education, Energy, and the Environment.

Information Source(s): Public Service Commission; Maryland Department of the Environment; Department of General Services; Department of Natural Resources; Maryland Energy Administration; Office of People's Counsel; Department of Legislative Services

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rh/lgc

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