HB 856

Department of Legislative Services

Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

House Bill 856 (Delegate Ross)
Economic Matters and Ways and Means

Clean Power Grant Fund - Maryland-Mined Coal Tax Credit

This bill establishes a Clean Power Grant Fund within the Maryland Department of the Environment (MDE) to provide grants to seven specified electric generating facilities for a portion of the cost of acquiring and installing emission controls. The bill requires the Governor to include in the annual budget bill an allowance to the fund as follows: $5.5 million for fiscal 2008, $10 million for fiscal 2009, and at least $15 million for fiscal 2010 and each subsequent fiscal year. The bill also phases out the Maryland-mined coal tax credit.

Fiscal Summary

State Effect: General fund revenues could increase by approximately $5.6 million in FY 2009, $11.3 million in FY 2010, and $17.1 million in FY 2011 due to the phase-out of the Maryland-mined coal credits. General fund expenditure increase of $5.5 million in FY 2008, $10.0 million in FY 2009, and at least $15.0 million annually thereafter due to the bill's mandated appropriations; special fund revenues and expenditures within MDE would increase correspondingly.

($ in millions)	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
GF Revenue	$0	$0	$5.6	$11.3	$17.1
SF Revenue	0	5.5	10.0	15.0	15.0
GF Expenditure	0	5.5	10.0	15.0	15.0
SF Expenditure	0	5.5	10.0	15.0	15.0
Net Effect	$0	($5.5)	($4.4)	($3.7)	$2.1

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

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: A grant awarded to an eligible facility may not exceed 40% of the total cost of acquiring and installing emission controls. The Secretary may provide grants to any electric generating facility in the State for a portion of the cost of acquiring and installing emission controls if there is money remaining in the fund after grant awards have been made to all eligible facilities. MDE must adopt regulations governing the administration of the fund.

The Maryland-mined coal tax credit, which is currently $3 per ton, would be phased out as follows:

- for tax year 2007, the tax credit would remain at $3 per ton;
- for tax year 2008, the tax credit would be reduced to $2 per ton;
- for tax year 2009, the tax credit would be reduced to $1 per ton; and
- after tax year 2009, the tax credit would be fully repealed.

Current Law: Public service companies in Maryland can claim a $3 per ton credit for the amount of Maryland-mined coal they purchase in a calendar year. This tax credit can be claimed against the public service company franchise tax and cannot exceed the State tax liability for that tax year.

Cogenerators and electricity suppliers that are not subject to the public service franchise tax can claim a $3 per ton credit for the amount of Maryland-mined coal they purchase in a calendar year. The credit is restricted to the electricity suppliers that were defined before July 1, 1999 as an electricity company under the Public Utility Companies Article. This restriction does not apply if an electricity supplier is an affiliate of one of the suppliers that were defined as an electricity company prior to July 1, 1999. This credit can be claimed against the State income tax and cannot exceed the tax liability for that tax year.

Background: MDE's Air and Radiation Management Administration operates the State's air pollution control programs under the framework established by the federal Clean Air Act (CAA). CAA requires all areas of the country to achieve specific air quality standards. Under CAA, new major stationary sources and existing major sources undergoing major modifications must install additional pollution control technologies. However, many older power plants have been able to avoid upgrading their pollution control technology by claiming that their modifications are "routine maintenance." In addition, several plants are not subject to certain federal requirements due to their age. As a result, the majority of older power plants have only limited pollution control technology in place.

Approximately two-thirds of the electricity generated in Maryland comes from the burning of fossil fuels (coal, oil, and natural gas). The process of burning fossil fuels produces many different air pollutants including sulfur dioxide (SO_2), nitrogen oxides (NO_x), carbon dioxide (CO_2), mercury, volatile organic compounds, and particulate matter. These pollutants are implicated in a whole host of environmental problems including smog, acid rain, global warming, and water pollution. In addition, the U.S. Environmental Protection Agency has identified numerous human health impacts associated with several of these pollutants.

Appendix 1 illustrates the SO_2, NO_x, and CO_2 emissions from specified fossil fuel-fired power plants in Maryland in 2003, including those listed as "eligible facilities" under the bill. In addition, according to 2003 data from MDE, electric generating units emit over 2,250 pounds of mercury per year – approximately 70% of total point source mercury emissions in the State.

Recently, there has been considerable activity regarding multi-pollutant proposals to limit power plant emissions. Several federal rules have been promulgated and proposed in the past year, such as the Clean Air Interstate Rule and the Clean Air Mercury Rule; federal legislation (the Clear Skies Act) has also been introduced. The Ozone Transport Commission, a group of northeastern and mid-Atlantic states, is currently in the process of developing its own multi-pollutant model rule.

In November 2005, Governor Ehrlich announced that MDE will be proposing regulations addressing emissions of NO_x, SO_2, and mercury from specified coal-fired power plants in the State. To date, this rule has not been proposed in writing in the Maryland Register.

Maryland-mined coal has relatively high ash content and moderate levels of sulfur as compared to other types of coal such as anthracite. The sulfur and ash content contribute to acid rain and particulate pollution. As a result of the 1990 amendments to the CAA, public service companies in Maryland significantly decreased their consumption of Maryland-mined coal. The Attorney General ruled in 1995 that consumption was not a requirement for claiming the tax credit. As a result, many companies have claimed the credit by acting as a broker, purchasing Maryland-mined coal and selling it to out-of-state companies who consume the coal.

State Fiscal Effect:

Mandatory Appropriation to New Grant Fund in MDE

The bill requires the Governor to include in the annual budget bill an allowance to the fund as follows: $5.5 million for fiscal 2008, $10.0 million for fiscal 2009, and at least

$15.0 million for fiscal 2010 and each subsequent fiscal year. It is assumed that the mandatory appropriation would be borne from the general fund.

Special fund revenues within MDE would increase correspondingly, as would special fund expenditures to provide grants, assuming there is demand for grants under the program. Legislative Services notes that the proposed funding levels of the new program will likely only cover a portion of the total costs to eligible facilities to install additional pollution control technology. However, given the recent federal rules and the anticipated proposed State regulations, it is likely that several of these facilities will be required to upgrade their pollution control technology over the next several years. Accordingly, for purposes of this fiscal note, it is assumed that there would be demand for grants.

Although the bill does not include explicit language allowing for MDE's administrative costs to be borne by the special fund, because the bill states that the purpose of the fund is "to provide" grants, for purposes of this fiscal note, it is assumed that MDE's administrative costs would be borne by the new special fund and accommodated within the appropriations to the fund. MDE estimates that administrative costs would increase by $87,290 in fiscal 2007, reflecting costs to hire two new staff (one grants supervisor and one grants specialist) to manage the new fund.

Legislative Services disagrees. First, the need for two positions to manage the fund is unjustified at this time, especially since MDE advises that existing staff would handle the review of grant applications. Second, because the mandatory appropriations to the fund do not take effect until fiscal 2008, the need to hire staff in fiscal 2007 is unclear. Accordingly, Legislative Services estimates that MDE's administrative expenditures could increase by an estimated $65,005 in fiscal 2008, which assumes an implementation date of July 1, 2007. This estimate reflects the cost of hiring one grants supervisor to manage the new fund. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses. The existing staff that would review grant applications under the bill could presumably begin to identify funding priorities in fiscal 2007.

Salary and Fringe Benefits	$61,421
Equipment/Operating Expenses	3,584
Total FY 2008 Administrative Expenditures	**$65,005**

Future year administrative expenditures would reflect: (1) 4.6% annual increases in the salary and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

Phase-out of Tax Credit

As a result of the phase-out of the Maryland-mined coal tax credits beginning in tax year 2008, general fund revenues would increase by approximately $5.6 million in fiscal 2009, $11.3 million in fiscal 2010, and $17.1 million in fiscal 2011. The estimated revenue gains, and out-year projections, are based on the following facts and assumptions:

- According to the Maryland Bureau of Mines, approximately 5.8 million tons of coal was mined in 2005. From 1994 to 2005 the amount of coal mined increased on average by 4.6% annually.
- The average amount of coal mined from 2006 through 2010 is estimated to increase by approximately 2%.
- Approximately 92% of all coal mined in 2003 and 2004 was claimed against the public service franchise tax.
- No credits will be claimed against the State income tax.

Officials of the largest coal producer in Maryland have indicated that it has nearly exhausted its Maryland coal reserves and production from its Maryland mines is likely to decrease substantially after 2006. This producer accounted for a little less than one-half of total State production in 2005. To the extent that production from these mines decreases without a corresponding increase in production in other mines located in the State, the increase in revenues from repealing the credit would be less than estimated. However, according to the U.S. Energy Information Administration (EIA), there are approximately 17 million tons of recoverable coal reserves at Maryland-producing mines in addition to 366 tons of estimated total recoverable reserves of Maryland coal. An EIA coal analyst contacted by Legislative Services does not foresee a significant reduction in the amount of coal mined in the State in the near future.

Further, the amount of coal mined by this coal producer has decreased by a total of 17% from 2003 to 2005. Notwithstanding this decrease, the total amount of coal mined in the State during this time has increased by a total of 13%.

Additional Information

Prior Introductions: None.

Cross File: SB 266 (Senator Garagiola, *et al.*) – Budget and Taxation.

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

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Appendix 1
Maryland Power Plant Facility Generating Capacity, Fuel Type, and 2003 Emissions

Facility Name	Total Nameplate Capacity (Megawatts)	Primary Fuel	SO_2 Tons	NO_x Tons	CO_2 Tons
AES Warrior Run	229	Steam (Coal)	n/a	482.6	n/a
Brandon Shores*	1370	Steam (Coal)	40,766.7	13,042.9	8,148,886.8
CP Crane*	416	Steam (Coal)	32,260.8	10,849.4	2,601,391.3
Chalk Point*	2647	Steam (Coal and Residual Fuel Oil)	52,278.8	13,448.5	6,249,666.9
Dickerson*	930	Steam (Coal) and Combustion Turbine (Distillate Fuel Oil)	30,174.7	5,181.9	2,761,808.9
Easton	61	Internal Combustion (Distillate Fuel Oil)	n/a	n/a	n/a
Herbert A. Wagner*	1059	Steam (Coal and Residual Fuel Oil)	23,153.9	6,297.0	3,612,517.4
Morgantown*	1548	Steam (Coal) and Combustion Turbine (Distillate Fuel Oil)	85,340.6	17,792.8	7,759,622.1
North Cliff	144	Combustion Turbine (Natural Gas)	n/a	n/a	n/a
Panda Brandywine	288	Combined Cycle Combustion Turbine and Combined Cycle Steam (Natural Gas)	7.0	82.5	106,497.1
Perryman	404	Combustion Turbine (Distillate Fuel Oil)	14.5	41.5	33,013.6
Philadelphia Road	83	Combustion Turbine (Distillate Fuel Oil)	n/a	n/a	n/a
R. Paul Smith Power Station*	110	Steam (Coal)	3,749.3	988.8	544,712.8
Riverside	244	Steam (Natural Gas) and Combustion Turbine (Distillate Fuel and Kerosene)	0.0	20.1	8,304.8
Rock Springs Generating Facility	680	Combustion Turbine (Natural Gas)	0.8	40.8	165,707.5
Southern Maryland Electric Cooperative (SMECO)	84	Combustion Turbine (Natural Gas)	n/a	n/a	n/a
Vienna	183	Steam (Residual Fuel Oil)	1,022.4	198.5	103,157.7
Total	**10,480**		**268,769.5**	**68,467.3**	**32,095,286.9**

Note: n/a = Not Available
*Indicates an "eligible facility" under the bill.

Sources: U.S. Environmental Protection Agency Quick Reports
http://cfpub.epa.gov/gdm/index.cfm?fuseaction=emissions.quickreports.
Power Plant Research Program, Maryland Department of Natural Resources