

Department of Legislative Services  
Maryland General Assembly  
2008 Session

FISCAL AND POLICY NOTE

House Bill 1384  
Economic Matters

(Delegate Rudolph)

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Public Utility Companies - Maryland Energy Generation Authority

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This bill establishes the Maryland Energy Generation Authority. The authority is authorized to issue bonds for electricity generating facilities and associated transmission line projects. The authority can acquire directly or through governmental authority property and rights as necessary or convenient to improve or operate a project, on terms and at prices that the authority considers reasonable. The authority is able to procure the electric supply on behalf of “purchasing pool members” as an electric aggregator, and must give preference to in-state renewable energy resources when procuring electricity supply. The authority, in conjunction with the Maryland Energy Administration, is required to submit specified residential demand reducing plans and updates to the Public Service Commission before specified dates.

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Fiscal Summary

**State Effect:** General fund expenditures could increase by \$1.0 million in FY 2009 for initial expenses as a result of the State Treasurer advancing up to this authorized amount to the authority. General fund revenues would be repaid as the authority makes repayments on its State grant. Special fund revenues and expenditures would increase to the extent the authority initiates projects.

**Local Effect:** To the extent the authority can procure power supplies at reduced rates due to aggregation efforts, participants may benefit. Simultaneously, the authority is to provide preference for procuring the output of in-state renewable generation units, which typically produce electricity at a premium, potentially resulting in higher electricity costs for pool participants.

**Small Business Effect:** Overall minimal; however, small businesses with generation projects that are supported through the authority will benefit.

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## Analysis

**Bill Summary:** The stated purposes of the Maryland Energy Generation Authority are to

- encourage the construction and rehabilitation of electricity generating facilities in the State,
- reduce demand for electricity in the State by developing, in conjunction with MEA, energy efficiency, energy conservation, and demand response programs and services,
- secure an affordable supply of electricity for State and local governmental units by serving as an aggregator to procure the electricity supply of those governmental units.

The authority can acquire directly or through governmental authority property and rights as necessary or convenient to improve or operate a project, on terms and at prices that the authority considers reasonable. The Attorney General is the legal advisor to the authority. The authority is not subject to

- specified State Finance and Procurement provisions; and
- holding open meetings in which the general public is entitled to attend.

The authority may

- fix and collect rates and fees for the use of a project or to be furnished by a project;
- contract with any person or governmental entity to exercise its authority;
- establish aggregate rates to sufficiently pay for project operations and maintenance;
- pay for the principle and interest on issued bonds;
- and create and maintain reserves in a trust agreement.

The authority's rates, rents, fees, and charges are not subject to supervision or regulation by any other State government agency.

The State Treasurer is authorized to advance up to \$1 million to the authority for initial expenses. The sum must be repaid out of the first monies available from the authority's revenues. Expenses incurred are payable only from monies obtained through the authority's revenues.

Each year, the authority and the Public Service Commission must hold a joint public hearing for public comments on how the authority has carried out its assigned functions.

### *Electricity Aggregation*

The authority must purchase electricity supply on behalf of pool members that opt-in to the aggregation effort. Pool members can include State agencies and local governments that are currently authorized to purchase electricity supply on their own. The authority may enter into contracts to purchase electricity supply from any electricity supplier; while providing preference to electricity supplies generated from renewable resources in the State.

### *Residential Energy Efficiency and Conservation Programs and Services*

By October 1, 2009, the authority with MEA must develop and submit to PSC, a plan of programs and services that encourage and promote energy efficiency and conservation within the residential sector. The plan must include cost effective energy efficiency programs, energy conservation programs, and demand response programs. The plan must provide for low-income households. The plan must be updated every two years and submitted to PSC. PSC may require gas and electric companies to establish plan components.

Every two years, beginning on or before February 1, 2010, the authority, MEA, and PSC must prepare a report to the Governor and the General Assembly on the status of the residential programs and services. The report must include a recommendation to PSC for the appropriate funding for these programs and services. PSC when making any determination must in part consider the impact on jobs, the environment, residential electricity bills, and cost effectiveness.

### *Bonding Authority*

The authority has bonding authority. The authority may • acquire, develop, lease as lessor or lessee, and operate electricity generating facilities; • acquire property and rights-of-way located in or outside of the State on terms and at prices that the authority considers reasonable; • encumber a project or its site for the benefit of bond holders financing the project; • sell or lease electricity generating facilities; • survey property, with owner's permission, to accomplish its tasks; and • make loans.

The authority may periodically • issue bonds to pay all or part of the costs of acquiring or improving a project; • fund or refund those bonds; • purchase its bonds with any funds available; and • hold, pledge, cancel, or resell bonds. By resolution the authority may create security for the bonds.

The trust agreement authorizing bonds may contain provisions that are part of the contract with the bond holders. The provisions may include: pledging the following to secure payments of bonds, subject to any existing agreements with bond holders: the full faith and credit of the authority, revenues of a project, a revenue-producing contract the authority has made with a person or public entity, or the proceeds of the sale of bonds.

A bond is not a debt or liability of the State or a political subdivision of the State or a pledge of the faith and credit of the State or a political subdivision of the State. Each bond must state on its face that neither the State nor a political subdivision of the State is obliged to pay the principal of or the interest on the bond except from revenues pledged to the payment of the bond. The issuance of bonds does not directly, indirectly, or

contingently obligate the State or its political subdivisions: to levy or pledge a tax to pay the bonds, or to make appropriations to pay the bonds. Nothing prohibits the authority from pledging its full faith and credit in connection with the issuance of bonds.

Any pledge of revenues and other money is binding under a trust agreement authorizing bonds, and is valid and binding from the time the pledge is made. The revenue or money that the authority pledges and receives is subject immediately to the lien of the pledge, and neither physical delivery of the revenue or money nor any other act is required to validate the lien. The lien of the pledge is valid and binding against each party with a claim against the authority, regardless of whether the party has notice of the lien.

**Current Law:** In order to meet long-term, anticipated demand in the State for residential and small commercial standard offer service (SOS) and other electricity supply, PSC may require or allow an investor-owned electric company to construct, acquire, or lease, and operate, its own generating facilities, and transmission facilities necessary to interconnect the generating facilities with the electric grid, subject to appropriate cost recovery.

Chapter 549 of 2007 (SB 400) required PSC to consider providing a process, at the time bids by the investor-owned electric utility for electric supplies are obtained for SOS, to solicit bids for the procurement of cost effective energy efficiency and conservation programs and services if these are less expensive than electricity generation. SOS service is designed to accommodate residential and small commercial customers that have not shopped or cannot shop for electric power supplies, while the competitive retail market develops and electric suppliers enter the retail markets to supply electricity products.

PSC is required to evaluate the cost effectiveness of the investments by electric companies in energy conservation to reduce electrical demand and in renewable energy sources to help meet electric demand. This includes:

- the promotion and development of a building audit and weatherization program;
- utilization of renewable energy sources;
- promotion and utilization of electricity from cogeneration and wastes; and
- widespread public promotion of energy conservation programs.

Gas and electric utilities in Maryland are required to develop and implement energy efficiency and conservation programs, subject to review and approval by PSC. PSC can require a utility to establish any such program or service that PSC finds to be both cost effective and appropriate. PSC is required to adopt ratemaking policies for programs that encourage energy efficiency and conservation. PSC is empowered to consider reasonable financial incentives to participating utilities.

### *Aggregation for Electricity Supplies*

Counties and municipal corporations may not act as aggregators for electricity supply unless licensed by PSC. PSC may not license a county or municipal corporation to act as an electricity supplier unless it determines there is insufficient competition within the boundaries of the county or municipal corporation. Counties and municipalities are also subject to the same licensing requirements as other electricity suppliers. These licensing requirements include; proof of managerial competence and proof of financial integrity. An electricity supplier, a person, or a governmental unit may not make a change in the electricity supplier for a customer without the customer's permission.

COMAR 20.51.02.02 provides that an aggregator acts as an agent or intermediary on behalf of customers in the sale or purchase of electricity. An aggregator does not take title to the electricity. Aggregators do not include an entity that purchases electricity for its own use or for the use of its subsidiaries or affiliates. Moreover, aggregators do not include a combination of governmental units that purchases electricity for the use by the governmental units.

**Background:** The Electric Customer Choice and Competition Act of 1999 restructured the electric utility industry in the State to allow electric retail customers to potentially shop for electric power from various electric suppliers. Implementation of the Act was predicated on the supposition that the emergence of a competitive retail market would put downward pressure on prices and provide consumers with lower cost power. Prior to restructuring, the local electric utility, operating as a regulated, franchised monopoly, supplied all end-use customers within its service area with the three principal components of electric power service: generation; transmission; and distribution. With Maryland's restructuring of the electric power industry, generation of electricity is offered in a competitive marketplace. Prices for power supply are therefore determined by electric suppliers operating in the market, rather than being determined by PSC in a regulated environment.

Merchant generators or unregulated utility affiliates now own most power plants. Consequently, residential, commercial, and industrial customers purchase power from electric suppliers other than their local regulated utility. Power is purchased from electric suppliers, who either own generation assets or have purchased power from the wholesale market. This power is transported through the local utilities' transmission and distribution system (*i.e.*, "the wires") and delivered to retail customers.

### *PSC Reports and Proceedings*

Chapter 5 of the 2006 special session mandated PSC to complete several reports to assist the General Assembly in assessing the impact of electric restructuring on the State and in

altering it for the benefit of consumers. PSC was required to study actions taken to implement restructuring and study the impact of potential changes such as reregulating electric generation or allowing local aggregation. The majority of the studies required by the Act were not completed by the start of the 2007 legislative session, leaving much uncertainty as to the ideal structure of the electric industry in the State. Accordingly, Chapter 549 of 2007 was enacted to require PSC to initiate new proceedings to review and evaluate certain requirements of Chapter 5 of the 2006 special session, including the review and evaluation of any orders that were issued under the 2006 enactment. The Act also required PSC to conduct additional studies and complete reports on electric industry reregulation, assess the availability of adequate transmission and generation facilities to serve the electrical load demands of all customers in the State, and consider the implications of establishing an office of retail market development and establishing a long-term goal for energy efficiency and conservation, among many other matters.

A preliminary report identifying the issues relating to options for reregulation as required by Chapter 5 of the 2006 special session, including discussion of costs and benefits of returning to a regulated electric supply market was due and provided in December 2007. An additional PSC report was supplied in January 2008. A final report containing the complete set of evaluations, findings, and recommendations required under Chapter 5, as amended by Chapter 549 of 2007, is due December 1, 2008.

**State Fiscal Effect:** The Maryland Power Authority can acquire directly or through governmental authority property and rights as necessary or convenient to improve or operate a project, on terms and at prices that the authority considers reasonable. It is unclear to what extent the creation of the authority will result in the authority's acquisition of the power plants that currently operate in the State.

The Maryland Power Authority would own power plants and the associated transmission facilities to connect to the transmission grid. Ownership results from direct purchase of existing generation facilities or the construction of new facilities. Under the bill, generated power can be sold. Additionally, as an electricity supply aggregator, the Maryland Power Authority would purchase electricity.

While noting current prohibitions with respect to aggregation efforts on behalf of county and municipalities, as an approach to selling and procuring electricity supplies, it is envisioned that the authority would incorporate the following general elements:

- electric loads from the relevant State agencies, local jurisdictions, and municipalities would aggregate as the purchasing pool members;
- the authority, through a competitive solicitation process, would award a contract to an electric supplier to provide delivery service, ancillary services, transmission, and billing to the end-use installations included in the solicitation;

- the pricing arrangements for the electricity supplier would be on a per kilowatt hour charge that incorporates total costs; and
- the electricity supplier will be responsible for load-following services and charges or credits for differences in supplied load.

The authority would likely need to become a member of PJM, the wholesale marketer operator; and file with the Federal Energy Regulatory Commission as a Power Marketer. Additionally, the contractual arrangements with the electric supplier will need to accommodate the transfer of authority-supplied power to serve the aggregate load of pool participants. PJM requires that for an electricity supplier to deliver power, the power must be owned by the electricity supplier. Consequently, ownership of the power purchased by the authority as an aggregator will need to be transferred to the electric supplier. The approach contemplated has been successfully employed by other entities on a smaller scale in PJM.

It is unclear to what extent the authority can avoid the above process to supply for load. However, certain advantages of a State power authority can include • assisting in financing new, privately owned power plants or immediate purchase existing plants; • the ability to construct generation to match consumer demand; • lower-cost financing relative to utility owned generating facilities; and • environmental benefits associated with sponsored power plant projects. Actual generation facility expansion will require multiple years, and the authority would be exposed to risk if not able to cover costs from power generation activities that rely on revenues from operations alone.

The New York Power Authority (NYPA) and the California Power Authority are two well known examples of power authorities. While NYPA continues to operate, the California Power Authority still exists, but is not funded. In 2004, the California Legislative Analyst's Office noted the power authority was unsuccessful in financing any new power plants but had success in implementing projects that encourage energy conservation. The establishment of a Power Authority in Connecticut is under recent consideration. Illinois recently established a power authority as a not-for-profit State agency. Several federal authorities also exist; however, many of the current power authorities have access to older, depreciated generation facilities to provide low-cost power supplies.

General fund expenditures could increase by \$1.0 million in fiscal 2009 as a result of the State Treasurer advancing this authorized amount to the authority for initial expenses. The authority would make repayment to the general fund out of its revenues. The Department of Natural Resources, Office of People's Council, and PSC could handle the provisions of the bill with existing resources.

## **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** California Legislative Analyst's Office, Connecticut Attorney General's Office, Connecticut Department of Public Utility Control, Department of Natural Resources, Exeter Associates, Governor's Office, Maryland Municipal League, Maryland Association of Counties, Public Service Commission, Office of People's Counsel, Department of Legislative Services

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