Department of Legislative Services

Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE
Revised

House Bill 368 (The Speaker, *et al.*)(By Request – Administration)
Economic Matters Finance

Regional Greenhouse Gas Initiative - Maryland Strategic Energy Investment Program

This Administration bill establishes a Maryland Strategic Energy Investment Fund and a Maryland Strategic Energy Investment Program administered by the Maryland Energy Administration. The stated purpose of the fund is to decrease energy demand and increase energy supply to promote affordable, reliable, and clean energy to fuel Maryland's future prosperity. The bill repeals the Maryland Renewable Energy Fund and redirects revenues currently paid into that fund to the new fund. The bill also redirects proceeds from the sale of allowances under the Regional Greenhouse Gas Initiative (RGGI) into the new fund. The bill specifies allocations from the fund, establishes a related advisory board, and establishes planning and reporting requirements. Finally, the bill modifies provisions related to the Maryland Clean Air Fund. The bill also establishes criminal penalties for specified violations.

The bill takes effect June 1, 2008.

Fiscal Summary

State Effect: The bill does not have a direct impact on overall State finances. Rather, it merely redirects specified existing special fund revenues to the new fund. It is assumed that such funds would be spent even in the absence of this bill. Any workload impact on MEA and the Maryland Department of the Environment is unclear at this time, but the bill authorizes up to 3.5%, but not more than $4.0 million, of the fund to be used for administration. The bill's criminal penalty provisions are not anticipated to significantly affect State operations or finances.

Local Effect: Local government finances and operations are not directly affected.

Small Business Effect: The Administration has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary: The bill establishes specified duties for MEA with respect to managing, supervising, and administering the fund. Among other things, MEA must adopt regulations to implement the program and to ensure that fund resources are used only to carry out the purposes of the program. MEA is also directed to provide money to MDE to fund its climate change programs.

MEA is directed to use the fund to:

- invest in the promotion, development, and implementation of cost effective energy efficiency and conservation programs, projects, or activities; renewable and clean energy resources; climate change programs; and demand response programs designed to promote changes in customer electric usage;
- provide targeted programs, projects, activities, and investments to reduce electricity consumption by low-income and moderate-income residential customers;
- provide supplemental funds for low-income electricity assistance through the Electric Universal Service Program and other electricity assistance programs in the Department of Human Resources;
- provide residential customers with rate relief;
- provide grants, loans, and other assistance and investment as necessary and appropriate;
- implement energy-related public education and outreach initiatives regarding energy consumption and greenhouse gas emissions; and
- pay the expenses of the program.

The bill specifies that compliance fees currently paid into the Maryland Renewable Energy Fund that are redirected to the new fund must be used in the same manner as provided by current law. Monies otherwise are allocated as provided in **Exhibit 1**.

Exhibit 1
Maryland Strategic Energy Investment Fund Allocations

DHR – EUSP and other electricity assistance programs	17.0%
Residential rate relief	23.0%
Energy efficiency, conservation, and demand response	at least 46.0%
Renewable and clean energy, climate change, and energy related public education and outreach	up to 10.5%
MEA administration	up 3.5%, but not more than $4.0 million
TOTAL	100.0%

Of the allocation for energy efficiency, conservation, and demand response programs, at least one-half must target • the low-income residential sector with no cost to participants; and • the moderate-income residential sector. The bill specifies the qualifying types of programs eligible as energy efficiency, conservation, public education, and renewable and clean energy programs and initiatives.

The bill authorizes MEA to enter into contracts with third parties to assist in the development and implementation of programs and projects or to administer the program.

The bill creates a Strategic Energy Investment Advisory Board staffed by MEA to review and make recommendations on MEA's proposed uses of and expenditures from the fund. MEA must consider the advisory board's recommendations. Members may not receive compensation but are entitled to reimbursement for expenses.

By December 15, 2008, MEA must develop a plan for expenditures from the fund for fiscal 2009 and 2010. By September 1, 2009, and every three years thereafter, MEA must develop a plan for expenditures covering the next three fiscal years. The bill requires MEA to hold public meetings during the development of the plan. MEA must submit a plan to the advisory board for review.

Expenditures from the fund are made either by an appropriation in the annual State budget or by a budget amendment. An expenditure by budget amendment may be made only after MEA has submitted the proposed budget amendment and supporting documents to specified legislative committees for review and comment. MEA also must regularly disclose specified summary information on any contract that encumbers $100,000 or more from the fund.

The bill also establishes specified requirements for MEA with respect to monitoring and analyzing program impacts and outcomes.

By January 1 of each year, MEA must report to the Governor and the General Assembly on the uses and expenditures of the fund from the prior fiscal year. The bill establishes several requirements for that report.

The bill establishes prohibitions relating to making false statements or reports to MEA. A person who violates those prohibitions is guilty of a misdemeanor and on conviction is subject to a fine of up to $50,000 and/or imprisonment for up to one year.

Finally, the bill modifies the revenue sources to MDE's Maryland Clean Air Fund to accommodate any funds from the Maryland Strategic Energy Investment Fund and increases the cap on that fund (from $750,000 to $2.0 million).

Current Law:

Renewable Energy Portfolio Standard and Maryland Renewable Energy Fund

Maryland's Renewable Energy Portfolio Standard was established in 2004 in order to recognize the economic, environmental, fuel diversity, and security benefits of renewable energy resources; establish a market for electricity from those resources in Maryland; and lower consumers' cost for electricity generated from renewable sources. Chapter 119 of 2007 requires the Public Service Commission to take certain steps to improve the State's use of solar energy and established a Tier 1 solar requirement. According to the U.S. Department of Energy, 24 states and the District of Columbia have adopted some form of RPS as of September 2007. With the exception of West Virginia, all states from North Carolina to Maine have RPS legislative requirements; Virginia has a nonbinding RPS goal.

An electricity supplier must meet the RPS by accumulating "renewable energy credits" created from various renewable energy sources classified as Tier 1, Tier 1 solar, and Tier 2 renewable sources. A renewable energy credit is a tradable commodity representing the renewable energy generation attributes of one megawatt hour (MWh) of electricity. Electric suppliers must meet the RPS percentage requirements for the applicable year or pay compliance fees into the Maryland Renewable Energy Fund. MEA administers the Maryland Renewable Energy Fund to make loans and grants to support the creation of new Tier 1 or Tier 1 solar renewable sources in the State.

Tier 1 renewable sources include solar, wind, qualifying biomass, methane from the anaerobic decomposition of organic materials in a landfill or wastewater treatment plant, and geothermal sources. Tier 2 renewable sources include hydroelectric power other than pump storage generation, incineration of poultry litter, and waste-to-energy sources.

Regional Greenhouse Gas Initiative

The Healthy Air Act (Chapter 301 of 2006) required the Governor to include the State as a full participant in RGGI. In April 2007, Governor O'Malley signed RGGI, under which Maryland became the tenth state to join the Northeast and Mid-Atlantic regional climate change and energy efficiency program. MDE has proposed regulations that would implement the RGGI rules, including the responsibility to design and operate an allocation and auction program for emissions allowances. The Healthy Air Act of 2006 does not, however, specify where proceeds from the sale of allowances are to be deposited. Based on information provided by MDE when proposing its RGGI regulations, in the absence of legislation directing proceeds to a different fund, MDE anticipates that such proceeds would be deposited into the Maryland Clean Air Fund administered by MDE.

Under RGGI, funds are dedicated exclusively to three functions: • promoting energy efficiency measures; • promoting renewable or noncarbon emitting energy technologies; and/or • directly mitigating the impact on ratepayers attributable to the carbon trading program.

The Maryland Clean Air Fund is a special fund used by MDE for activities related to identifying, monitoring, and regulating air pollution in the State and providing grants to local governments. When the fund balance is at or above $750,000, any additional monies that otherwise would be deposited in the fund go to the general fund instead.

Chapters 3 and 4 of 1999 required PSC to establish a continuing, nonlapsing EUSP to help electric customers with annual incomes at or below 150% of the federal poverty level. DHR is required to administer the program through the Maryland Energy Assistance Program within the Office of Home Energy Programs. DHR may contract with a for-profit or nonprofit Maryland corporation existing as of July 1, 1999 to help administer the program. PSC is responsible for overseeing the program. The universal service program includes: (1) bill assistance, at a minimum of 50% of the individual's need; (2) low-income weatherization; and (3) retiring arrearages.

Background: The Regional Greenhouse Gas Initiative – Maryland Strategic Energy Investment Program is one of four components associated with Governor O'Malley's Strategic Electricity Plan. MEA is an independent unit of State government created, in part, to promote the conservation and efficient use of energy, and to evaluate and coordinate energy-related policies and activities among State and local agencies. MEA also manages federal energy conservation programs, coordinates the State's participation in interstate energy activities, advises the Governor on energy emergency issues, and maintains energy emergency preparedness.

MEA recently released a *Strategic Electricity Plan* for the State, identifying various strategies to address the State's energy future, including the creation of a Strategic Energy Investment Fund geared toward energy efficiency, renewable energy, and climate change reduction/mitigation; various energy efficiency/conservation-related options to decrease demand; options to increase electricity supply, both in general and from renewable sources; enhanced State energy planning; and stimulation of Maryland's clean energy (energy efficiency/conservation and renewable energy) industry.

The *Strategic Electricity Plan* is, in part, a response to PSC reports that the State faces a critical shortage of electricity capacity that could force mandatory usage restrictions by 2011 or 2012. In an interim report to the General Assembly, PSC indicated the shortage will need to be addressed both by additions in capacity and transmission, and by reduction of the amount of electricity used. The PSC interim report provides initial recommendations and plans to take actions to increase the available supply of electricity as well as require regulated utilities to implement aggressive and cost-effective demand management and energy conservation programs.

The recommendation to establish a dedicated fund for energy efficiency programs is also consistent with the recent recommendations made by the Maryland Commission on Climate Change. Specifically, the commission recommended the establishment of a publicly administered energy investment fund to help the State meet the EmPOWER Maryland energy efficiency goals using revenues generated from RGGI as a starting point.

State Fiscal Effect: The bill does not affect overall State finances. However, the bill directs certain existing revenues to the Strategic Energy Investment Fund established by the bill. Specifically, compliance fees that are currently paid into the Renewable Energy Fund would be directed to this fund, as would any proceeds from the sale of allowances under RGGI. The bill also directs the existing fund balance of the Maryland Renewable Energy Fund into the new fund.

Maryland Renewable Energy Fund

According to MEA's most recent report to PSC regarding the status of the fund, the uncommitted balance of the fund is currently $38,209.45 and no projects have been supported by the fund. MEA advises that under the current RPS program, annual compliance fees are only anticipated to generate about $30,000 annually, although compliance fee revenue could be higher as a result of Chapters 125 and 126 of 2008, which increase the RPS requirements and specified compliance fees.

RGGI Auction Proceeds

The sale of allowances under RGGI could result in a significant increase in special fund revenues for the State but any such increase cannot be reliably estimated at this time. Revenues will vary depending on the percentage of allowances sold and the price per allowance. However, when proposing its regulations to implement RGGI, MDE estimated that proceeds could range from an estimated $9.4 million annually to about $262.5 million annually, which represents a range of possible revenues based on the lowest predicted allowance price ($0.25) to the highest price ($7). MDE now advises that allowance prices will likely run in the $2 to $3 range; using those prices, and other MDE assumptions regarding the number of allowances, the range of possible revenues narrows to approximately $80 million to $140 million annually at the start of the trading program. Currently, the first RGGI auction is expected to be held in September 2008, although the first auction will only cover a portion of the annual allowances and will thus generate only a portion of the estimated annual revenues.

Program Expenditures

Any revenues that would be available to the new fund would presumably be spent even in the absence of this bill. Under current law, proceeds from the sale of allowances under RGGI are anticipated to be used largely to fund energy efficiency programs and cover the administrative costs of such programs within MDE and MEA. Current law also provides for MEA's use of funds paid into the Renewable Energy Fund.

At this time, it is unclear to what extent the bill could impact the overall workload of MEA and MDE. Although MEA advises that it expects the implementation of the program to require additional staff, it did not provide any specific information regarding the number of staff that may be needed. Rather, MEA advises that depending on the programs and contractual mechanisms used to implement them, staffing needs will vary. Legislative Services notes, however, that since MDE anticipates redirecting the bulk of RGGI revenues to MEA for energy efficiency programs even in the absence of this bill, it is unclear if this bill alone would result in the need for additional staff.

Legislative Services notes that the fiscal 2009 budget includes two new positions within MEA for various purposes.

In any event, the bill authorizes up to 3.5%, but not more than $4.0 million, to be used to administer the fund.

Other Impacts

As noted above, 17.0% of the fund would be transferred each year to DHR for EUSP and other electricity assistance programs. Because applications for assistance from EUSP and other programs depend more on economic conditions than the amount of funding available, it is assumed that DHR could handle the bill's changes with existing resources.

It is also assumed that PSC could handle the bill's changes with existing resources.

The criminal penalty provisions of this bill are not expected to significantly affect State finances or operations.

Additional Comments: As a component of the Electric Choice and Restructuring Act of 1999, the General Assembly required PSC to report on Demand-Side Management (DSM) programs in the State. In PSC's 2001 *Report on Energy Efficiency and Conservation Programs*, PSC recommended that another State agency take the lead in promoting DSM efforts, focus on specifics of developing programs, and provide day-to-day management oversight. PSC supported MEA as the agency to oversee such programs.

Additional Information

Prior Introductions: None.

Cross File: SB 268 (The President, *et al.*) (By Request – Administration) – Finance and Education, Health, and Environmental Affairs.

Information Source(s): Judiciary (Administrative Office of the Courts); Comptroller's Office; Maryland Department of the Environment; Power Plant Research Program, Department of Natural Resources; Maryland Energy Administration; Public Service Commission; Office of the People's Counsel; Office of the Attorney General; Department of Human Resources; Department of Legislative Services

Fiscal Note History:	First Reader - February 11, 2008
mll/hlb	Revised - Clarification - February 12, 2008
	Revised - Updated Information - March 20, 2008
	Revised - House Third Reader - April 5, 2008
	Revised - Enrolled Bill - May 1, 2008

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