

Department of Legislative Services
 Maryland General Assembly
 2009 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 14

(Senator Astle, *et al.*)Finance and Education, Health, and
Environmental AffairsEconomic Matters and Environmental
Matters

Maryland Environmental Service - Energy Generation Projects

This Administration bill authorizes the Maryland Environmental Service (MES) to engage in additional types of energy projects and services, such as the production, generation or distribution of energy from renewable or other sources, the undertaking of energy conservation measures, and engaging in research and development studies. The bill clarifies MES authority to undertake recycling and other solid waste disposal projects. The bill allows counties and municipalities to enter into energy projects and other agreements with MES without regard to certain limitations or other provisions regulating the procurement or awarding of public contracts. The Public Service Commission's (PSC) authority is not restricted with respect to MES energy projects. The bill also clarifies MES authority to issue bonds and notes and charge and collect rates and fees for projects and services.

Fiscal Summary

State Effect: MES is a self-supporting State agency. The bill does not materially affect State operations or finances.

Local Effect: Potentially significant to the extent local jurisdictions enter into energy generation projects. While acknowledging MES promotes and provides services based on positive cash flow analysis, the extent such agreements will result in aggregate reductions or increases in local expenditures with respect to power plants is unclear.

Small Business Effect: A small business impact statement was not provided by the Administration in time for inclusion in this fiscal note. A revised fiscal note will be issued when the Administration's assessment becomes available.

Analysis

Current Law:

Maryland Environmental Service

MES may only undertake energy projects that have a waste-to-energy or recycling component.

MES is an independent State agency, created in 1970, that provides technical services to clients for engineering, design, financing, construction, project management, and operation of water supply and wastewater treatment facilities. These technical services support water supply, wastewater treatment, and solid waste management for State agencies, counties, municipal corporations, and private entities. MES currently has the authority to exercise eminent domain, establish and collect rates, fees, and charges for certain projects, products, and services. MES can also place statutory liens against real property for unpaid charges owed to MES by the property owner and satisfy the charge by use of a tax sale.

MES is authorized to issue bonds or notes for the purpose of paying all or any part of the cost of any one or more projects. A project is a solid waste disposal project, a wastewater purification project, or a water supply project. Bonds or notes issued are not deemed to constitute or create a debt or pledge of the faith and credit of the State or any political subdivision.

MES can exercise the right of eminent domain in a manner that MES considers necessary or convenient for the construction or operation of a project, upon terms and at prices considered by MES to be reasonable and can be agreed upon by MES and the owner of the interest. At any time 10 days after the return and recordation of the verdict or award in a condemnation proceeding, MES may take possession of the property condemned, upon paying to the clerk of the court the amount of the award and all costs taxed to that date, notwithstanding any appeal or further proceeding by the defendant. MES must abide by any judgment in any appeal or further proceedings.

MES can enter into contracts with the federal or any State government, any local jurisdiction, or person to provide for or relating to the furnishing of services associated with the facilities of any project. MES can contract with the inhabitants of any municipality of any constructed or acquired project, including the sale of any fuel, steam, electricity, energy, or other material or resource derived from the operation of any project.

Public Service Commission

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.

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:

- 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.

Maryland Clean Energy Center

Chapter 137 of 2008 established the Maryland Clean Energy Center as a body politic and corporate and as an instrumentality of the State to (1) promote and assist the development of clean energy industry in the State; (2) promote the deployment of clean energy technology in the State; and (3) collect, analyze, and disseminate industry data. The center must coordinate with the Maryland Energy Administration (MEA) and may not duplicate the programs or activities of MEA without its consent, and is authorized to:

- accept loans, grants, or assistance of any kind from the federal or State government, a local government, a college or university, or a private source;
- make grants to or provide equity investment financing for clean energy technology-based businesses;
- acquire, purchase, hold, lease as lessee or lessor, sell, transfer, license, assign, use, or dispose of various forms of property and property interests;

- fix and collect rates, rentals, fees, royalties, and charges for services and resources it provides or makes available;
- maintain offices at a place it designates in the State;
- create, own, control, or be a member of specified business entities;
- acquire, develop, improve, manage, market, license, sublicense, maintain, lease, or operate a project in the State to carry out its purposes;
- borrow money and issue bonds to finance any part of the cost of a project or for any other corporate purpose of the center;
- secure the payment of any portion of borrowing through property or revenues of the center;
- cooperate with and provide assistance to local governments, instrumentalities, and research entities in the State; and
- coordinate clean energy technology development, education, and deployment activities with federal or other public or private programs.

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 purchase electricity for use by the governmental units.

Electric Suppliers

Other than an electric company providing SOS or a municipal cooperative serving its own customers, electricity suppliers operating in Maryland must first apply for and meet and abide by applicable standards (*e.g.*, financial integrity, accurate consumer information) before PSC issues a license to operate in the State. Electricity suppliers are

not required to own generation resources but can broker and procure energy supplies from the wholesale market.

Background: MES operates more than 200 water and wastewater treatment facilities as well as solid waste transfer stations, material recycling facilities, the Hart-Miller Island Dredged Material Containment Facility, the Poplar Island Dredged Material Beneficial Use Project, the Midshore Regional Landfill, and two yard debris composting facilities. MES operates on a fee-for-service basis under contract. The service is responsible for over 402 projects located in every jurisdiction in the State that range in cost from \$2,800 to \$6.3 million. In fiscal 2008, the Maryland Environmental Service collected \$135.2 million in user charges. The proposed fiscal 2010 State budget estimates that MES will collect \$130.1 million in user charges.

Strategic Energy Plan

In January 2008, the Maryland Energy Administration released the State *Strategic Energy Plan*. Among other things, the plan recommended (1) the establishment of a Strategic Energy Investment Fund geared toward energy efficiency, renewable energy, and climate change reduction/mitigation; (2) various energy efficiency/conservation-related options to decrease demand; (3) options to increase electricity supply, both in general and from renewable sources; (4) enhanced State energy planning; and (5) stimulation of Maryland's clean energy (energy efficiency/conservation and renewable energy) industry.

Electric Customer Choice and Competition Act

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 may 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.

Certificate of Public Convenience and Necessity

PSC regulates power plants and transmission lines. An entity planning to construct or modify a generating facility or a transmission line must receive a Certificate of Public Convenience and Necessity (CPCN) from PSC before beginning construction. Application for a CPCN is reviewed before a hearing examiner in a formal adjudicatory process that includes written and oral testimony, cross examination, and the opportunity for full public participation. The CPCN process constitutes permission to construct the facility and incorporates several required permits, including air quality and water appropriation. The CPCN licensing process provides an opportunity for the State to examine all the significant aspects and impacts of a proposed power facility or transmission line, including the interrelations between various impacts and cumulative effects.

State Fiscal Effect: The projects envisioned by MES are primarily focused on leveraging current projects, directly implementing smaller-scale renewable projects, and assisting public or private entities with larger energy projects. These projects can include the use of poultry litter as a fuel source, landfill gas recapture, and waste-to-energy projects associated with various waste and waste treatment facilities across the State. Smaller scale solar- and wind-based projects could also materialize under the guidance of MES as a State power authority.

The bill allows MES to construct, own, and operate power plants of any capacity. The bill also allows MES to construct, own, and operate transmission lines that would be necessary to connect this energy to the existing infrastructure. It is unclear to what extent this will result in large scale power plant development or MES's acquisition of power plants currently in operation in the State without the direct request for assistance by current plant owners. Although the intention of the bill is to stimulate new power generation development in the State, Legislative Services notes that MES could acquire a current power generating project through a negotiated purchase or by eminent domain proceedings.

MES, as a State power authority, would own, construct, or support the development of 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 by MES.

Aggregation for Electricity Supplies

The provisions of the bill appear to allow MES to act both as an electricity supply aggregator by entering into contracts with State and local agencies; and, as an electric supplier that contracts directly with the inhabitants of a municipality at the retail level to sell electricity derived from the operation of a generation project. While noting current prohibitions with respect to aggregation efforts on behalf of counties and municipalities, as an approach to selling and procuring electricity supplies, it is envisioned that MES would incorporate the following general elements:

- electric loads from the relevant State agencies, local jurisdictions, and municipalities would aggregate as the purchasing pool members;
- MES, through a competitive solicitation process, would award a contract to an independent 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.

MES would likely need to become a member of PJM Interconnection (PJM), the wholesale market 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 MES-supplied power to serve aggregate retail load. 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 MES 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 MES can avoid the above process to supply for load. However, certain advantages of a State power authority can include (1) assisting in financing new, privately owned power plants or immediate purchase of existing plants; (2) the ability to construct generation to match consumer demand; (3) lower-cost financing relative to utility-owned generating facilities; and (4) environmental benefits associated with sponsored power plant projects. Actual generation facility expansion will require multiple years, and MES 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. 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.

Other State Agencies

The Maryland Energy Administration advises that its activities would be enhanced through the facilitation of generation and conservation efforts, particularly within the local government sector. The Department of Natural Resources, Office of People's Counsel, and PSC could handle the provisions of the bill with existing resources.

Local Fiscal Effect: The bill would authorize local governments to enter into contracts with MES without requiring MES to follow a local procurement process, such as a competitive bidding process. Local governments in Maryland have established local procurement systems, some of which do not permit the local government to contract directly with the State government when the local government is procuring goods or services from a State agency.

Additional Information

Prior Introductions: HB 1509 of 2008 passed the House and received a favorable with amendments report from the Senate Finance Committee. No further action was taken on the bill.

Cross File: HB 314 (Delegate Rudolph and the Speaker)(By Request - Administration) - Economic Matters and Environmental Matters.

Information Source(s): Allegany County, Prince George's County, Talbot County, Wicomico County, Town of Berlin, Town of Bladensburg, City of College Park, City of Frostburg, City of Rockville, Baltimore City, Department of Natural Resources, Maryland Department of the Environment, Maryland Energy Administration, Maryland Environmental Service, Montgomery County, Public Service Commission, Department of Legislative Services

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