

Department of Legislative Services  
Maryland General Assembly  
2010 Session

FISCAL AND POLICY NOTE

House Bill 1013 (Delegate Beitzel)  
Economic Matters

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**Wind-Powered Electric Generating Facilities - Decommissioning and Restoration  
- Surcharge, Bond, or Other Security, and Fund**

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This bill establishes a Maryland Wind-Powered Electric Generating Facility Decommissioning and Restoration Fund to ensure that adequate funds exist to decommission the facilities once they cease to operate and to restore the former operating sites to their preoperating condition. As a revenue source for the fund, the Public Service Commission (PSC) must establish a surcharge on wind-powered electric generating facilities with a generating capacity that does not exceed 70 megawatts. In lieu of a surcharge, a facility may post a bond or other accepted security.

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**Fiscal Summary**

**State Effect:** Special fund revenues to the newly created Maryland Wind-Powered Electric Generating Facility Decommissioning and Restoration Fund increase as a result of decommissioning surcharges, bonds, and securities being imposed on certain wind-powered facilities. Special fund expenditures increase for consultants to assist PSC in determining the appropriate surcharge, and in future years, to fund any necessary decommissioning and restoration activities.

**Local Effect:** Local governments that own wind-powered electric generating facilities will be subject to paying a decommissioning surcharge or posting a bond or other security.

**Small Business Effect:** Potential meaningful. Small businesses that own wind-powered electric generating facilities will be subject to paying a decommissioning surcharge or posting a bond or other security. However, the amount of the surcharge, bond, or security required is unknown, and thus the overall impact on affected small businesses is unknown.

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## Analysis

**Bill Summary:** Revenue from the surcharge must be collected by the Comptroller and placed into the new special fund. PSC must collect bonds or other securities and deposit them into the fund. Surcharges, bonds, or other securities paid by a wind-powered electric generating facility must be accounted for separately within the fund so that disbursements from the fund to decommission a facility or to restore a site are only paid from the account created for that facility.

PSC must establish regulations to, among other things, determine the criteria for establishing the amount of the surcharge. PSC must review the surcharge amount at standard intervals and may adjust the amount of the surcharge upon review. PSC must administer the decommissioning fund and must receive and review applications for disbursements from the fund. By February 1 of each year, PSC must report on the amounts received and disbursed by the fund in the preceding calendar year. In this report PSC must include the evaluation criteria used to make disbursements, the projected receipts of the fund in the current calendar year, and plans for the use of the fund in the current calendar year. PSC may use up to 10% of the special fund revenue for administrative expenses, including project review and oversight.

**Current Law:** If a commercial wind-powered generating facility is granted a certificate of public convenience and necessity (CPCN) by PSC, the generating facility may be constructed without regard to local zoning rule, regulation, law, or ordinances. When considering an application for a CPCN, PSC may require an applicant to provide for decommissioning of the facility as a condition of approval. In past cases this has included establishing a bond or financial instrument to ensure that the facility can be returned to a state comparable to the condition of the land prior to construction. Wind-powered generating facilities with a capacity over 70 megawatts must obtain a CPCN prior to construction.

Wind-power generating facilities with a capacity under 70 megawatts may apply for a CPCN or may request an exemption from CPCN requirements. PSC must grant an exemption from CPCN requirements as long as certain conditions are met: (1) the wind-powered facility is land-based; (2) the generating capacity is 70 megawatts or less; (3) the excess electricity is sold on the wholesale market pursuant to an interconnection, operation, and maintenance agreement with the local electric company; and (4) PSC provides an opportunity for public comment at a public hearing. If a generating facility is granted an exemption from the CPCN requirement, PSC evaluation is limited to ensuring safety and reliability of the electric system. All issues other than safety and reliability of the electric system are left up to other State and local agencies.

State law does not provide specifically for the decommissioning of electric generation facilities. The requirements for decommissioning a nuclear power plant are set out in U.S. Nuclear Regulatory Commission regulations (Title 10 of the Code of Federal Regulations, part 20 subpart E, and parts 50.75, 50.82, 51.53, and 51.95).

**Background:**

*Commercial Wind Facilities*

The majority of proposed commercial wind-powered electric generation in the State is currently expected to be 70 megawatts of capacity or less and eligible for exemption from CPCN requirements. If PSC grants an exemption from CPCN requirements, local ordinances and regulations may restrict wind development. If a facility is granted a CPCN, wind facilities may be constructed as licensed. **Exhibit 1** shows proposed wind-power projects in Maryland.

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**Exhibit 1**  
**Proposed Wind-power Projects in Maryland**

<u>Project</u>	<u>Developer</u>	<u>Proposed Size (MW)</u>	<u>County</u>	<u>PSC Case Number</u>	<u>Status</u>
Criterion	Clipper	70	Garrett	8938	Received CPCN exemption
Savage Mountain	U.S. Windforce	40	Garrett & Allegany	8939	CPCN was extended to March 2010
Roth Rock	Synergics	50	Garrett	9191	Received CPCN exemption
Dans Mountain	U.S. Windforce	70	Allegany	9164	Received CPCN exemption
Eastern Wind	Synergics	60	Garrett	N/A	In early planning phase

Source: Maryland Power Plant Research Program, Public Service Commission, Department of Legislative Services

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*Small Wind Facilities*

Local zoning restrictions for wind turbines vary by jurisdiction. The Maryland Energy Administration (MEA) provides a model zoning ordinance for small wind energy systems

(less than 100 kilowatts), which has been adopted by some counties and municipalities. Nine counties (Allegany, Caroline, Carroll, Dorchester, Frederick, Harford, Howard, St. Mary's, and Washington) have adopted local ordinances for small wind generation.

The total number of small wind generating facilities in the State is not known. However, based on data from MEA's Windswept Grant Program, which provides grants to help offset a portion of the cost of small sale wind energy projects, approximately 57 projects have been approved for grants and 42 projects have been completed. These small wind installations are located in Allegany, Carroll, Charles, Dorchester, Howard, Kent, Montgomery, Queen Anne's, Wicomico, and Worcester counties. **Exhibit 2** provides information on the Windswept Grant Program.

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**Exhibit 2**  
**Windswept Grant Program**

<b>Fiscal Year</b>	<b><u>Projects Approved for Grants</u></b>				<b><u>Projects Completed</u></b>				<b>Completed Capacity (kW)</b>	<b>Projected Additional Capacity (kW)</b>
	<b>Total</b>	<b>Res.</b>	<b>Com.</b>	<b>Local/ State Gov.</b>	<b>Total</b>	<b>Res.</b>	<b>Com.</b>	<b>Local/ State Gov.</b>		
2008	9	8	0	1	9	8	0	1	16.2	-
2009	15	12	2	1	10	8	2	0	46.8	-
2010	33	24	7	2	23	18	4	1	68.2	152.6
<b>Total</b>	<b>57</b>	<b>44</b>	<b>9</b>	<b>4</b>	<b>42</b>	<b>34</b>	<b>6</b>	<b>2</b>	<b>131.2</b>	

Note: Res. = residential; Com. = commercial

Source: Maryland Energy Administration, Status as of December 14, 2009

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**State Fiscal Effect:** The decommissioning surcharge applies to wind-powered generating stations under 70 megawatts. This includes moderate-sized commercial development and small wind generating stations. The number of commercial wind facilities that will pay the surcharge is unknown because these projects may elect to post a bond or other security in lieu of paying a decommissioning surcharge. The number of small wind generating stations in the State that are subject to the bill's surcharge is also not known. According to MEA's Windswept Grant Program, 57 small wind projects have been approved for grants as of December 14, 2009, and additional small wind installations are expected to be constructed in the future. Because the amount of the surcharge and the number of facilities subject to the surcharge cannot be estimated, special fund revenues to the Maryland Wind-Powered Electric Generating Facility Decommissioning and Restoration Fund cannot be reasonably ascertained at this time.

PSC can handle ongoing project review and oversight with existing budgeted resources. However, in order to determine the appropriate decommissioning surcharge, PSC needs to estimate the cost of decommissioning wind-powered generating facilities of different sizes and attributes. This will result in additional engineering and economic consultant expenditures. Because the bill allows up to 10% of special fund revenues from a decommissioning surcharge to be used for administrative purposes, however, it is assumed that the bill's requirements can be handled with those funds.

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### **Additional Information**

**Prior Introductions:** SB 773 of 2009 received an unfavorable report from the Senate Finance Committee.

**Cross File:** SB 200 (Senator Edwards) - Finance.

**Information Source(s):** Allegany and Garrett counties, Comptroller's Office, Public Service Commission, Department of Legislative Services

**Fiscal Note History:** First Reader - March 7, 2010  
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