SB 713

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FISCAL AND POLICY NOTE

Senate Bill 713 (Senator Lenett, *et al.*)
Finance and Education, Health, and Environmental Affairs

Public and Commercial Buildings - Energy Benchmarking and Disclosure

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This bill requires electric and gas companies to maintain energy consumption records for nonresidential customers in a format that is compatible with uploading to the U.S. Environmental Protection Agency's (EPA) Portfolio Manager, and to upload those records after receiving specified authorization. Certain nonresidential and State buildings must be "benchmarked" annually, which means that energy statistics for structures comparable to those buildings must be obtained and, if applicable, Energy Star ratings must be obtained for those buildings using the EPA Portfolio Manager. These requirements apply starting in 2012 for some buildings and 2013 for others. Benchmarking data and ratings for affected buildings must annually be submitted to the Maryland Energy Administration (MEA), which must include the information in a specified annual report. Beginning in 2014, specified building owners and operators must disclose benchmarking data and ratings to specified persons or entities.

Fiscal Summary

State Effect: General fund expenditures may increase beginning in FY 2012 for contractual services to benchmark State buildings and for public outreach, if needed. Due to uncertainties, the costs cannot be reliably estimated. *For illustrative purposes only*, under one set of assumptions, expenditures could increase by $1,000 per building benchmarked. Ongoing costs for contractual services may be incurred to the extent future benchmarking cannot be accomplished with existing State agency staff. To the extent utility rates are affected by gas or electric companies' costs to comply with the bill, State energy expenditures could increase.

Local Effect: Local governments may be impacted by the bill's disclosure requirements, but any impact could be minimal in many cases. To the extent utility rates are affected by gas or electric companies' costs to comply with the bill, local government energy expenditures could increase.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: Electric and gas companies must maintain records relating to energy consumption for nonresidential customers in a format that is compatible with uploading to the EPA Portfolio Manager; and to upload those records after receiving authorization from affected building owners or operators.

Beginning in 2012, privately owned commercial buildings over 150,000 square feet, as well as all State owned or operated buildings with an area of at least 10,000 square feet, must be benchmarked annually. Beginning in 2013, privately owned commercial buildings over 50,000 square feet must be benchmarked. By July 1 of each year, the owners and operators of the affected privately owned buildings must submit the benchmarking data and ratings for the previous calendar year to MEA. For State buildings, the Department of General Services (DGS) must compile and submit the benchmarking information to MEA. The bill specifies that unless MEA makes the submitted information available to the public in some other manner, it must be included in its annual report related to the Strategic Energy Investment Fund (SEIF). Another provision of the bill, however, requires the benchmarking information to be included in that report.

Beginning in 2014, the owner or operator of a publicly owned building (including State owned or operated buildings) or a privately owned commercial building with an area of more than 10,000 square feet must disclose the building's benchmarking data and ratings for the most recent 24-month period to lessees of more than 2,000 square feet of the building and specified prospective buyers, lessees, and lenders.

Current Law: Under State law, subject to review and approval by the Public Service Commission, gas and electric companies are required to develop and implement programs and services to encourage and promote the efficient use and conservation of energy by consumers, gas companies, and electric companies. Under the EmPOWER Maryland Energy Efficiency Act of 2008 (Chapter 131), PSC was required, on or before December 31, 2008, by regulation or order, to:

- require each electric company to procure or provide for its electricity customers cost-effective energy efficiency and conservation programs and services, to the extent determined to be available, with projected and verifiable electricity savings that are designed to achieve a targeted reduction of at least 5% by the end of 2011 and 10% by the end of 2015 of per capita electricity consumed in the electric company's service territory during 2007; and

- require each electric company to implement a cost-effective demand response program in the electric company's service territory that is designed to achieve a targeted reduction of at least 5% by the end of 2011, 10% by the end of 2013, and 15% by the end of 2015, in per capita peak demand of electricity consumed in the electric company's service territory during 2007.

The Act required electric companies, on or before September 1, 2008, and every three years thereafter, to submit plans to PSC detailing the electric companies' proposals for achieving the electricity savings and demand reduction targets for the three subsequent calendar years.

With respect to State government energy consumption, DGS, in cooperation with MEA, is required to project energy-related lifecycle costs and conduct energy consumption analyses with respect to building construction and renovation, and, so that it can audit and evaluate competing design proposals, set standards for energy performance indices. DGS must also, in cooperation with MEA, establish standards and procedures for evaluating the efficiency of the design for any proposed State-financed or State-assisted building construction, which must be updated by March 1 of each odd-numbered year.

The State Building Energy Efficiency and Conservation Act of 2006 (Chapter 427 of 2006) required that:

- DGS, in cooperation with MEA, set energy performance standards to reduce the average energy consumption in State buildings from the baseline 2005 level by 5% in 2009 and 10% in 2010;

- each State agency conduct an analysis of the gas and electric consumption in each of the buildings under its jurisdiction and the cost of that consumption by December 31, 2007. The analysis was to be conducted under the direction of MEA and in coordination with DGS and was to include an examination of methods to achieve energy and costs savings; and

- each State agency upgrade its energy conservation plan, developed in consultation with DGS and MEA, to achieve the performance standards set by DGS no later than July 1, 2008.

Background:

EPA Portfolio Manager/Energy Star Rating

The EPA Portfolio Manager is an online energy management tool that allows energy and water consumption of buildings to be tracked and assessed and allows the energy performance of certain types of commercial buildings to be rated on a scale of 1-100 relative to similar buildings nationwide (Energy Star rating). Not all commercial buildings are eligible to receive a rating, but types of eligible buildings include offices, hospitals (acute care and children's), courthouses, and K-12 schools. Colleges and universities, fire stations and police stations, and libraries are building types that appear to currently be ineligible to receive an Energy Star rating. Buildings must also meet certain criteria and at least 11 consecutive months of energy meter data that accounts for all energy use (regardless of fuel type) must be available.

Energy Star's web site indicates that the rating was developed as a screening tool, which does not by itself explain why a building performs a certain way, or how to change the building's performance, but helps organizations assess performance and identify those buildings that offer the best opportunities for improvement and recognition.

Energy Star indicates that a small number of State and local governments have established requirements for Energy Star benchmarking/rating of public and/or private buildings, including the District of Columbia, cities of New York and Denver, and Hawaii and Michigan.

MEA Time-of-sale Disclosure Recommendation

MEA recommends, in its *Maryland Energy Outlook* (2010), that time-of-sale disclosure of energy consumption of all residential and commercial buildings for the previous year be required, subject to size limitations. MEA indicates that the requirement should be modeled after the requirement currently in force in Montgomery County which applies to single-family homes and requires the seller to provide copies of electricity, gas, and home heating oil bills, or a cost and usage history, for the 12 months immediately prior to the sale. Additional information to assist homebuyers in making energy conservation decisions must also be provided.

California has a somewhat similar disclosure requirement for nonresidential buildings to that being required under the bill. California's law was enacted in 2007 and requires electric and gas utilities, as of January 1, 2009, to maintain energy consumption information of nonresidential buildings in a format compatible for uploading to the EPA Portfolio Manager and, upon receiving authorization of a building owner or operator, to upload the information to the EPA Portfolio Manager. As of January 1, 2010, an owner or operator of a nonresidential building must disclose the EPA Portfolio Manager benchmarking data and ratings for the most recent 12-month period to a prospective buyer, lessee of the entire building, or lender that would finance the entire building.

Utility Demand Response and Energy Efficiency Programs

Utilities submitted their first plans to achieve the EmPOWER Maryland goals in 2008, which were approved, with some modifications, in 2008 and 2009. MEA indicates that utilities' demand response programs are based on the concept of utilities turning off or "cycling" a customer's air conditioner or water heater during times of high demand and provide financial incentives for customers to participate. The utility plans also included energy efficiency and conservation programs to encourage utility customers to implement energy efficiency measures through financial incentives and broad-based, system-wide consumer education efforts. According to MEA, utilities have developed their own energy efficiency programs, but common program features include energy audits and rebates for lighting, efficient appliances, and other efficiency measures, with utilities typically offering a different set of programs for residential and nonresidential customers.

Efforts to Reduce State Government Energy Consumption

DGS' Office of Energy Performance and Conservation currently seeks to reduce energy consumption in State facilities through facility upgrades, a comprehensive electricity purchasing strategy, renewable energy, and the implementation of a new statewide utility database. Most of the State's energy-related facility upgrades are performed via energy performance contracts which typically consist of an energy audit, design, construction, maintenance, and monitoring and verification. There are currently 27 such projects in varying stages of development. DGS is also working on completing a State energy database of all utility consumption and expenditures. According to DGS, once fully implemented, the web-based database will enable the department to manage utility consumption, ensure the accuracy of utility billings, and implement energy reduction efforts for all State agencies.

DGS Jurisdiction

DGS' facilities and operations responsibilities are limited to only a portion of State buildings, including the Annapolis and Baltimore public buildings and grounds and 17 regional multiservice centers.

State Fiscal Effect:

Benchmarking of State buildings

General fund expenditures may increase beginning in fiscal 2012 to meet the requirements of the bill; however, a number of uncertainties make it difficult to reliably estimate the actual cost of complying with the bill, most notably:

- uncertainty of the level of contractual work that may be required to annually benchmark each State owned or operated building with an area of at least 10,000 square feet each year; and
- uncertainty of the number of State buildings that meet the threshold of at least 10,000 square feet of area.

According to the Department of Budget and Management, there are almost 5,000 buildings owned by the State. *For illustrative purposes only*, the cost of benchmarking State buildings could be $1,000 per building, assuming it would take an average of one day to complete the benchmarking process for each building and that a professional engineer (at $125/hr) would be hired to conduct the benchmarking. Under those assumptions, general fund expenditures could increase by $1 million to benchmark 1,000 State buildings. As mentioned above, however, it is uncertain how many State buildings have at least 10,000 square feet of area.

Legislative Services advises that the costs for contractual services may be reduced if existing staff can gather data and conduct the benchmarking of buildings or if the data maintained and uploaded to EPA's Portfolio Manager by electric and gas companies reduces the amount of effort required. EPA's Portfolio Manager appears to be designed for use by building owners and managers at no cost. In addition, the State energy database currently being developed also has the capability to upload information to the EPA Portfolio Manager. Responses received from a small number of agencies have varied with respect to whether benchmarking of the agencies' buildings could be accomplished at no costs or whether costs would be incurred.

DGS notes that there has been difficulty in gathering information from all agencies for the State energy database and that despite the ability to upload information from the State energy database to the EPA Portfolio Manager, additional information would still need to be gathered for each building. Accordingly, hiring a contractor to conduct the benchmarking may be the most effective manner of meeting the bill's requirements.

DGS has indicated that the compiling of the benchmarking data for State buildings and submission to MEA will require additional work for the agency, but it is unclear whether those requirements can be handled within existing resources or not. Presumably, any costs would be reduced if the State energy database can be utilized to compile and submit the information.

Costs for contractual services may be incurred to benchmark State buildings in future years to the extent future benchmarking cannot be handled by existing State agency staff.

Receipt and Reporting of Benchmarking Information

MEA does not foresee a significant fiscal impact resulting from its responsibilities under the bill regarding receipt of benchmarking data and ratings from commercial and State buildings and reporting the information. MEA expects to publicize and promote the requirements of the bill through the agency's web site and events associated with the commercial building industry, but not conduct targeted notification of building owners and operators. Legislative Services advises that additional resources could be required to conduct targeted notification of building owners and operators of the bill's requirements, if necessary, to ensure compliance.

Potential Impact on Utility Rates

Utility rates could be affected to the extent gas or electric companies incur significant costs to implement the bill's requirements and then seek recovery of those costs. Whether any increase in rates would meaningfully impact State energy expenditures, however, would depend on the costs of implementation, which are uncertain and will vary by company.

Local Fiscal Effect: It appears that the bill's requirement of disclosure of benchmarking data and ratings for buildings with an area of more than 10,000 square feet would apply to local governments, but only in instances where more than 2,000 square feet of a building is leased to a third party or the local government was selling a building or leasing more than 2,000 square feet of a building. Presumably, local governments may be impacted by the requirement; however, a small number of local governments contacted indicate that the bill will have minimal or no impact.

As mentioned above, to the extent gas or electric companies incur significant costs to implement the bill's requirements and then seek recovery of those costs, utility rates could be affected. Whether any increase in rates would meaningfully impact local government energy expenditures, however, is uncertain.

Small Business Effect: Small businesses could be meaningfully impacted by the bill's benchmarking and disclosure requirements. To the extent the EPA Portfolio Manager can be used, costs should be minimal. The bill's requirement of disclosure of benchmarking data and ratings, however, presumably could affect a small business' ability to sell, or lease space in a building, or cause the small business to incur costs to make energy efficiency improvements before doing so.

As mentioned above, to the extent gas or electric companies incur significant costs to implement the bill's requirements and then seek recovery of those costs, utility rates could be affected. Whether any increase in rates would meaningfully impact a small business, however, is uncertain.

Additional Information

Prior Introductions: None.

Cross File: HB 985 (Delegate Hecht, *et al.*) - Economic Matters.

Information Source(s): Maryland Energy Administration; Department of General Services; Public Service Commission; Office of People's Counsel; Maryland Department of Transportation; Department of Public Safety and Correctional Services; Maryland Department of the Environment; Maryland Department of Agriculture; University System of Maryland; Department of Budget and Management; Allegany, Harford, and Montgomery counties; cities of Frederick and Havre de Grace; Baltimore Gas and Electric Company; Washington Gas; U.S. Environmental Protection Agency; Department of Legislative Services

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