SB 627

Department of Legislative Services

Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 627 (Senator Ramirez, *et al.*)
Finance

Maryland Energy Administration - Regulated Sustainable Energy Contract Program

This bill authorizes the Maryland Energy Administration (MEA) to create a Regulated Sustainable Energy Contract Program. Under the program, qualified contractors provide residential renewable energy installations and residential energy efficiency measures to residential property owners under regulated sustainable energy contracts of up to $30,000 that are recorded in land records and enforceable by imposition of a lien on the property. MEA must perform a feasibility study before developing and implementing the program and may develop and implement a test or pilot program. MEA must report to the General Assembly on the administration's progress in carrying out the requirements of the bill by December 31, 2013.

The bill takes effect July 1, 2013.

Fiscal Summary

State Effect: Special fund revenues and expenditures may increase significantly, possibly beginning in FY 2014, if MEA creates a Regulated Sustainable Energy Contract Program. The revenues and expenditures reflect collection of fee revenue and the costs of contractual services and an additional assistant Attorney General position within MEA associated with implementing the program. The total cost of the program cannot be reliably estimated at this time.

Local Effect: The bill is not anticipated to materially affect local operations or finances.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Authorization of a Regulated Sustainable Energy Contract Program

The bill authorizes MEA to create a Regulated Sustainable Energy Contract Program to authorize "qualified contractors" approved by MEA to provide residential renewable energy installations and residential energy efficiency measures to residential property owners under regulated sustainable energy contracts of up to $30,000 in accordance with the bill. If such a program is created, MEA must administer the program and adopt regulations covering various specified subjects relating to the program.

The bill is intended to promote energy conservation and the use of renewable energy by providing a secure form of long-term financing to facilitate the implementation of residential renewable energy installations and residential energy efficiency measures on or in residential properties.

MEA may authorize qualified contractors to (1) enter into regulated sustainable energy contracts with individual residential property owners, groups of residential property owners, or the builder of a new residential structure; (2) directly bill each property owner that is a party to a contract or owns property subject to a contract; and (3) enforce payment by imposing a lien on property subject to the contract in accordance with the Maryland Contract Lien Act under Title 14, Subtitle 2 of the Real Property Article, subject to specified conditions.

The authorization of a qualified contractor may be limited to a particular territory or specified residential renewable installation. More than one qualified contractor, however, may be authorized to operate in a particular territory or to offer specified residential renewable energy installations. MEA may revoke an authorization if it determines that a qualified contractor is not complying with the terms of the authorization, there is an excessive number of consumer complaints, or the authorization is no longer serving the purpose of the bill.

MEA may enter into contracts with third parties to ensure that financing is provided only to projects that carry out the terms and conditions of regulated sustainable energy contracts and that the purposes of the program are fulfilled. MEA may also collect reasonable fees from qualified contractors to carry out its duties under the bill and to ensure that the purposes of the program are fulfilled.

Before developing and implementing a program, MEA must perform a study to assess the feasibility of the program and the administration's abilities to fulfill its duties regarding the program. MEA also may develop and implement a test or pilot program. MEA must ensure that any financing authorized under the bill complies with applicable specified credit provisions of the Commercial Law Article.

Regulated Sustainable Energy Contracts

The bill establishes various requirements applicable to the regulated sustainable energy contracts that qualified contractors enter into with residential property owners. For each property expected to be subject to a regulated sustainable energy contract, the qualified contractor must notify any party that holds a recorded mortgage or deed of trust on property of the expected existence and terms of the contract and the right of the party to object in writing to the contract within 30 days of receipt of the notice. If an objection is made, the contract may not become effective and if executed is void. Unless an objection is made, a regulated sustainable energy contract must be recorded in the land records in the county in which each property is located.

The bill authorizes a property owner to subject property to a regulated sustainable energy contract by recording or authorizing the recordation of the contract among the land records in the county where the property is located. Subject to specified conditions, a person who acquires property subject to a regulated sustainable energy contract assumes the obligation to pay the qualified contractor in accordance with the rate and payment schedules in the contract.

A qualified contractor may not enter into a regulated sustainable energy contract unless, for each property that would be subject to the contract (1) property taxes and mortgage debt are current; (2) there are no outstanding or unsatisfied liens; (3) there are no notices of default or other evidence of property-based debt delinquency for the lesser of the three years immediately preceding the contract date or the length of time the property owner has owned the property; and (4) the contract has not been objected to by a party that holds a recorded mortgage or deed of trust on the property.

MEA must establish (1) specified terms and conditions for regulated sustainable energy contracts, including interest rates, schedules, and rates for repayment; (2) eligibility requirements for property owners that account for the owner's ability to pay in a manner substantially similar to specified requirements for a mortgage loan; and (3) mechanisms for quality control and to ensure that savings to a property owner outweigh the costs of the contract.

Current Law: Other programs established in statute that MEA is currently responsible for administering include the Maryland Strategic Energy Investment Program and the Jane E. Lawton Conservation Loan Program (JELLP). Revenues from carbon dioxide allowance auctions under the Regional Greenhouse Gas Initiative are allocated under the Maryland Strategic Energy Investment Program, a portion of which fund the majority of MEA's activities. JELLP is a revolving loan fund that provides low-interest loans to nonprofit organizations, local jurisdictions, and eligible businesses for energy efficiency and renewable energy projects. Among MEA's responsibilities listed in statute is a responsibility to provide for, encourage, and assist, where practicable, public participation in the development and dissemination of energy programs.

Under the Maryland Contract Lien Act, a lien on a property may be created by a contract and enforced under the Act if the contract expressly provides for creation of a lien and describes the party entitled to establish and enforce the lien and the property against which the lien may be imposed. Generally, liens against real property take priority in the order in which they are recorded.

Background: The up-front costs of installing renewable energy and energy efficiency measures can be a barrier against consumers adopting such measures. In a recent Public Service Commission Order (No. 84569) relating to utilities' implementation of programs under the State's EmPower Maryland law (which targets reductions in electricity consumption and peak demand), the commission stated that "access to financing is critical for many consumers who must invest thousands of dollars to achieve significant energy savings in their homes and businesses." The commission also noted that "investments can often pay for themselves in a matter of years if financing rates are affordable." The commission found that the lack of convenient, accessible financing at favorable rates was a missing link in the utilities' programs and ordered a work group to be convened to analyze financing options and legislative or regulatory solutions.

The work group submitted its proposal to the commission in January 2013. The proposal would integrate the Maryland Home Energy Loan Program (MHELP) into electric company residential programs. MHELP is an off-bill, unsecured loan program administered by the Maryland Clean Energy Center with funds made available through MEA from the American Recovery and Reinvestment Act of 2009. The program provides affordable and accessible financing to Maryland residents for qualifying energy efficiency improvements.

State Fiscal Effect: Special fund revenues and expenditures may increase significantly, possibly beginning in fiscal 2014, if MEA creates a Regulated Sustainable Energy Contract Program. These increases reflect fee revenue generated from qualified contractors, as authorized under the bill, and expenditures for (1) contractual services to implement and oversee the program once it is established and (2) at least one additional attorney position within MEA (likely an assistant Attorney General) with knowledge of commercial lending law and mortgage transactions. Existing legal staff within MEA does not have the necessary expertise.

The magnitude of the potential increase in special fund revenues and expenditures cannot be reliably estimated at this time, due to uncertainty about the scope and cost of the third-party contract (or contracts) that MEA would enter into to implement and oversee the program. The cost of the salary and benefits for an assistant Attorney General alone would be at or above $100,000 annually. It is assumed, for the purposes of this fiscal and policy note, that the program would not go forward if it was determined that the fees generated from qualifying contractors or other available funds other than general funds would not be sufficient to cover MEA's costs. If, however, a program is established and fees are not sufficient to cover the costs of the program, funding would likely have to be covered with other MEA special funds, at the expense of other programs, or general funds.

MEA expects that it could conduct the feasibility study required under the bill with existing program development staff and other currently available resources such as technical assistance from the federal government and nonprofit organizations.

Small Business Effect: Creating a third-party financing mechanism for property owners to install sustainable energy products provides an additional way to finance the purchase and installation of such equipment. If additional property owners are able to install sustainable energy products as a result of the bill, small businesses involved with the manufacturing, distribution, and installation of sustainable energy products stand to benefit.

Additional Information

Prior Introductions: Similar bills, HB 995 of 2012 and HB 658 of 2011, received unfavorable reports from the House Economic Matters Committee.

Cross File: HB 621 (Delegates Niemann and Hucker) - Economic Matters.

Information Source(s): Maryland Energy Administration, Office of People's Counsel, Public Service Commission, State Board of Contract Appeals, Department of Housing and Community Development, Judiciary (Administrative Office of the Courts), Department of Legislative Services

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