Department of Legislative Services

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2022 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1033 (Delegates Rosenberg and Stein)
Appropriations and Economic Matters

Environment and Energy - Investment in Overburdened Communities

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This bill requires the Maryland Department of the Environment (MDE), by December 1, 2022, to develop policies and recommendations to require at least 40% of overall spending on specified programs, projects, and investments to benefit "overburdened communities." State and local governmental units, in consultation with MDE, other specified State agencies, and the Commission on Environmental Justice and Sustainable Communities (CEJSC) must, to the extent practicable, invest or direct available and relevant programmatic resources in a manner designed to achieve the investment to benefit overburdened communities. In addition, federal funds appropriated for specified programs and agencies (most of which relate to energy and energy efficiency) must also be prioritized to provide funding to overburdened communities. The bill also establishes related annual reporting requirements.

Fiscal Summary

State Effect: General fund expenditures increase by $323,000 in FY 2023 and special fund expenditures increase by $229,400 in FY 2023. Future years reflect annualization, inflation, and ongoing costs. State expenditures (all/multiple fund types) may be affected beginning in FY 2024, and federal fund revenues may decrease beginning in FY 2024.

(in dollars)	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
FF Revenue	$0	(-)	(-)	(-)	(-)
GF Expenditure	$323,000	$380,000	$390,800	$401,100	$412,000
SF Expenditure	$229,400	$273,300	$281,000	$288,400	$296,000
GF/SF Exp.	$0	-/(-)	-/(-)	-/(-)	-/(-)
Net Effect	($552,400)	(-)	(-)	(-)	(-)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Local expenditures may be affected as a result of the bill's funding prioritization requirements. Local revenues may also be affected, but any such impact cannot be reliably estimated at this time.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Overburdened Community

The bill defines "overburdened community" as any census tract, as determined in accordance with the most recent census information, in which (1) the median household income is not more than 75% of the statewide median household income and (2) according to data obtained from MDE, the U.S. Environmental Protection Agency (EPA), the Maryland Department of Agriculture (MDA), the Department of Natural Resources (DNR), or other State agency, 3 or more of 15 specified environmental indicators are above the 75th percentile statewide.

Policies and Recommendations to Prioritize Spending

By December 1, 2022, MDE must develop policies and recommendations to require at least 40% of overall spending on specified programs, projects, and investments to be benefit overburdened communities.

The policies and recommendations developed by MDE apply in each fiscal year, starting with fiscal 2024, to spending on programs, projects, and investments in the areas of (1) green infrastructure; (2) climate change; (3) clean energy and energy efficiency; (4) clean transportation; (5) affordable and sustainable housing; (6) training and workforce development related to specified topics; (7) remediation and reduction of legacy pollution; and (8) critical clean water and waste infrastructure. The spending on programs, projects, and investments includes those programs, projects, and investments that are wholly or partially funded under (1) the Small, Minority, and Women-Owned Business Account (SMWOBA) within the Department of Commerce; (2) the Clean Energy Workforce Account within the Maryland Department of Labor (MDL); and (3) the Jane E. Lawton Conservation Loan Program (JELLP), the Strategic Energy Investment Program, and the Maryland Offshore Wind Business Development Fund (MOWBDF) within the Maryland Energy Administration (MEA).

To achieve the investment in overburdened communities, MDE must conduct public information-gathering sessions in different areas of the State to solicit input from overburdened communities and the public. After conducting the public consultation, MDE must work with CEJSC to develop specific recommendations to identify and provide assistance to overburdened communities, including legislative and regulatory changes to achieve the required investment.

MDE must review its guidelines and recommendations, as specified, by October 1, 2024, and every two years thereafter. Upon review, MDE may recommend modifications based on new data and other information. By October 1, 2024, and annually thereafter, MDE must submit a report of its activities and recommendations to the Governor and the General Assembly.

State and Local Governments – Investment in Overburdened Communities

State and local governmental units, in consultation with MDE, CEJSC, the Public Service Commission, and MEA, must, to the extent practicable, invest or direct available and relevant programmatic resources in a manner designed to achieve the investment to benefit overburdened communities as required by the bill.

Prioritization of the Use of Federal Funding for Specified Projects

Federal funds that are appropriated either in the budget bill or by budget amendment to agencies and programs that receive funds for the programs, projects, and investments in the following areas must be prioritized in a manner that provides funding to overburdened communities: (1) green infrastructure; (2) climate change; (3) clean energy and energy efficiency; (4) clean transportation; (5) affordable and sustainable housing; (6) training and workforce development related to specified topics; (7) remediation and reduction of legacy pollution; and (8) critical clean water and waste infrastructure. The bill specifies several programs subject to this provision, including programs administered by MEA, MDE, MDL, the Department of Human Services (DHS), the Maryland Department of Transportation (MDOT), Commerce, the Military Department, DNR, MDA, the Maryland Department of Health, in addition to any other agencies and programs receiving funds for the above purposes. However, this provision does not apply to a program or activity to the extent that the requirement conflicts with federal law or regulations for that program or activity.

Required Annual Report

The Department of Budget and Management, in coordination with the appropriate State units, must submit an annual report to specified committees of the General Assembly by December 31, 2022, and annually thereafter. The report must provide information on the amount of federal funds that are appropriated for (1) green infrastructure; (2) climate change; (3) clean energy and energy efficiency; (4) clean transportation; (5) affordable and sustainable housing; (6) training and workforce development related to specified topics; (7) remediation and reduction of legacy pollution; and (8) critical clean water and waste infrastructure. The report also must provide information on the share of funds directed to overburdened communities pursuant to the bill.

Current Law:

Strategic Energy Investment Program and Fund

The Strategic Energy Investment Program within MEA has the stated purpose of decreasing energy demand and increasing energy supply to promote affordable, reliable, and clean energy to fuel Maryland's future prosperity. The program is supported by the Strategic Energy Investment Fund (SEIF), which was established by Chapters 127 and 128 of 2008, primarily to contain revenue generated from the sale of carbon dioxide emission allowances under the Regional Greenhouse Gas Initiative. The allocation of revenue has been altered several times in budget reconciliation legislation. The current allocation requires (1) at least 50% for energy assistance; (2) at least 20% for energy efficiency and conservation (at least one-half for low- and moderate-income programs); (3) at least 20% for renewable and clean energy, energy-related education and outreach, resiliency, and climate change programs; and (4) up to 10%, but no more than $5.0 million, for administrative expenses.

Commission on Environmental Justice and Sustainable Communities

CEJSC within MDE is tasked with examining issues of environmental justice and sustainable communities for all Marylanders. To this end, CEJSC (1) uses data sets and mapping tools to review and analyze the environmental justice implications of current State policy, laws, and regulations; (2) assesses the adequacy of State and local laws, permits and actions, and policies to address the issue of environmental justice and sustainable communities; (3) coordinates with the Children's Environmental Health and Protection Advisory Council, the Maryland Office of Minority Health and Health Disparities, and the Commission on Climate Change on recommendations to further environmental justice and sustainable communities; and (4) recommends options to the Governor and the General Assembly for addressing issues, concerns, or problems related to environmental justice.

Small, Minority, and Women-Owned Businesses Account

SMWOBA, which was established in 2007, is a special, nonlapsing fund that is administered by Commerce. The purpose of the account is to provide investment capital and loans to small, minority, and women-owned businesses in the State. State law generally requires that 1.5% of video lottery terminal proceeds at each licensed video lottery facility be paid into SMWOBA. At least 50% of such activity must be allocated to eligible businesses in the jurisdictions and communities surrounding a video lottery facility. Chapter 757 of 2019 requires MEA to use SEIF to provide funding for access to capital for small, minority, women, and veteran-owned businesses in the clean energy industry under SMWOBA, subject to specified conditions. This funding is required to be allocated in annual increments from fiscal 2021 through 2028.

The Employment Advancement Right Now Program and the Clean Energy Workforce Account

The Maryland Employment Advancement Right Now (EARN) program, administered by MDL, was established in 2013 to create industry-led partnerships to advance the skills of the State's workforce, grow the State's economy, and increase sustainable employment for working families. Specifically, the program provides general fund grants on a competitive basis for industry partnerships, workforce training programs, and job readiness and skills training.

Chapter 757 requires MEA to use SEIF to invest in pre-apprenticeship, youth apprenticeship, and registered apprenticeship programs to establish career paths in the clean energy industry under the EARN program. Subject to specified requirements, starting in fiscal 2021, $1.5 million must be transferred for grants to pre-apprenticeship jobs training programs, and $6.5 million must be transferred for grants to youth and registered apprenticeship jobs training programs until all amounts are spent. Chapter 757 also established the Clean Energy Workforce Account in the EARN program to receive and disburse the transfers as grants.

Jane E. Lawton Conservation Loan Program

The stated purpose of JELLP within MEA is to provide financial assistance in the form of low-interest and zero-interest loans to nonprofit organizations, local jurisdictions, State agencies, and eligible businesses for projects to (1) promote energy conservation; (2) reduce consumption of fossil fuels; (3) improve energy efficiency; and (4) enhance energy-related economic development and stability in the nonprofit, commercial, and industrial sectors.

Maryland Offshore Wind Business Development Fund

Chapter 3 of 2013 (The Maryland Offshore Wind Energy Act) established MOWBDF within MEA to (1) provide financial assistance, business development assistance, and employee training opportunities to emerging businesses in the State to prepare them to participate in the emerging offshore wind industry and (2) encourage emerging businesses in the State to participate in the emerging offshore wind industry. In addition to other sources of revenue, developers of approved offshore wind projects must each deposit $6.0 million into the fund over about two years. MEA is authorized to use the fund to carry out the purposes of the fund and for implementation costs.

EmPOWER Maryland

In 2008, the General Assembly passed the EmPOWER Maryland Energy Efficiency Act, which set target reductions of 15% in per capita electricity consumption and peak demand, respectively, by 2015 from a 2007 baseline. Legislation in 2017 extended the program through its 2018-2020 and 2021-2023 program cycles and established a new annual energy savings goal of 2.0% per year, based on each electric company's 2016 sales.

Energy Assistance

The Office of Home Energy Programs within DHS administers a variety of energy assistance programs and services for residential customers using local administering agencies, including local departments of social services, in each county and Baltimore City. These programs include the Electric Universal Service Program bill payment assistance, Maryland Energy Assistance Program bill payment assistance (heating source), and gas and electric arrearage assistance programs. The income eligibility for each of these programs is 175% of the federal poverty level.

State Fiscal Effect:

Maryland Department of the Environment Administrative Costs

General fund expenditures for MDE increase by $322,956 in fiscal 2023, which accounts for the bill's October 1, 2022 effective date. This estimate reflects the cost of hiring five administrators to (1) develop the required policies and recommendations; (2) coordinate with other agencies and entities; (3) conduct the public information-gathering sessions; (4) biannually review the guidelines and recommendations that are developed; (5) develop and submit the required annual report; and (6) evaluate MDE expenditures and prioritize funding as required under the bill. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. The information and assumptions used in calculating the estimate are stated below:

- the bill creates an annual cycle of data collection and biannual program review requirements; and

- the policy considerations required under the bill are complex and necessitate coordination with multiple agencies and entities to both develop and review the policies and guidelines.

Positions	5.0
Salaries and Fringe Benefits	$286,241
Operating Expenses	36,715
Total FY 2023 MDE Admin Costs	**$322,956**

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Maryland Energy Administration Administrative Costs

SEIF special fund expenditures for MEA increase by $229,405 in fiscal 2023, which accounts for the bill's October 1, 2022 effective date. This estimate reflects the cost of hiring three employees (one program manager and two energy specialists) to (1) consult and work with MDE as necessary to coordinate and provide assistance to overburdened communities; (2) conduct necessary program review and develop new policies; (3) meet the bill's requirements to invest or direct available and relevant programmatic resources in a manner designed to achieve the priorities identified for overburdened communities under the bill; (4) prioritize federal funding appropriated to affected MEA-administered programs as required; and (5) collect data for the required annual reporting. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. The information and assumptions used in calculating the estimate are stated below:

- the bill creates an annual cycle of data collection and biannual program review requirements; and
- MEA administers a number of programs that are either explicitly or likely affected by the bill, many of which have subprograms or other distinct categories within them; accordingly, the bill creates new responsibilities for MEA that cannot be handled with existing staff.

Positions	3.0
Salaries and Fringe Benefits	$207,376
Operating Expenses	22,029
Total FY 2023 MEA Admin Costs	**$229,405**

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses. To the extent SEIF does not have sufficient funding to cover these costs, general funds may be necessary to cover these costs in the out-years.

Priority Spending to Benefit Overburdened Communities and New Requirements

Overall impacts from the mandated priority spending to benefit overburdened communities are unclear because the bill has potentially far-reaching impacts that have indeterminate impacts on spending and may result in a decrease in federal fund revenues. For some affected programs, overall finances are likely not affected, but funding is redirected as a result of the bill's requirements. Ultimately, overall impacts are difficult to estimate and depend in part on the policies and guidelines developed under the bill. These impacts begin in fiscal 2024. Some of the potential impacts are discussed below.

The bill changes the priority for spending under a broad variety of clean energy and energy efficiency programs, projects, and investments in the areas of housing, workforce development, pollution reduction, low-income energy assistance, transportation, natural resources, agriculture, health, and economic development. Additionally, to the extent that there are insufficient programs, projects, and investments that benefit overburdened communities, mandating that at least 40% of overall spending for these efforts be used to benefit overburdened communities may restrict the ability of affected agencies to fully use available funding. For example, for grant and loan programs, if less than 40% of applicants are applying for funding that benefits overburdened communities, then an agency may be unable to fully issue grant or loan funding in a given year due to lack of eligible applicants. These impacts would begin in fiscal 2024.

According to the Governor's proposed fiscal 2023 budget, the amount of federal funding alone that could be affected for just the *listed* agency and program budget codes could be more than $2.0 billion. Thus, the universe of potential affected funding is significant. It should be noted that the extent to which priority uses identified under the bill conflict with federal law or regulations for affected programs or activities is unknown. Nevertheless, it is likely challenging to use some of the federal funding for affected programs, projects, and investments to benefit overburdened communities.

For example, DNR notes that due to the ecological nature of most DNR federally funded activities, it is impossible for the agency to direct 40% of existing federal funds to overburdened communities. DNR expects to receive $43 million in federal fund revenue in fiscal 2023, the vast majority of which will be grant funds. In future years, DNR advises that it may forgo applying for some federal grants to the extent that it is unable to utilize the funding in a manner consistent with the guidelines and polices developed as a result of the bill. The bill specifies that the prioritization requirement does not apply to the extent that the requirement conflicts with federal law or regulations for that program or activity. However, it is unclear whether that exemption extends to the unavailability of eligible programs, projects, or investments that benefit overburdened communities (versus a direct conflict).

As another example, MDOT anticipates that it may need to develop a screening tool to evaluate funding decisions and to track information needed for the annual reports. MDOT also notes that the mandated program prioritization may restrict the agency's ability to use funding in the most efficient manner.

In conclusion, State expenditures (all/multiple fund types) may increase to implement the bill's requirements, but may decrease to the extent agencies are not able to spend funding in a manner required by the bill. As noted above, federal fund revenues may decrease to the extent any agencies forego applying for federal grant funds as a result of the bill's changes. However, any such impacts cannot be reliably predicted.

Local Fiscal Effect: The bill requires local governmental units, to the extent practicable, to invest or direct specified programmatic resources in order to achieve the priorities established for overburdened communities. Thus, spending on affected local programs may also be redirected under the bill. Similar to the impact on affected State agencies described above, the bill may restrict local government's ability to efficiently and effectively use available funding.

Small Business Effect: Under the bill, some small businesses likely benefit from an increase in funding, while others receive less funding. Since, taken together, the affected programs have considerable funding, the impact could be meaningful. However, without more detail on the priority spending policies and guidelines developed and the identification of overburdened communities, a reliable estimate of the bill's impact on small businesses cannot be made at this time.

Additional Information

Prior Introductions: HB 1310 of 2021, a similar bill, received a hearing in the House Appropriations Committee, but no further action was taken.

Designated Cross File: None.

Information Source(s): Department of Commerce; Caroline and Prince George's counties; Maryland Department of Emergency Management; Department of Budget and Management; Maryland Department of the Environment; Maryland Department of Health; Department of Housing and Community Development; Department of Human Services; Maryland Department of Labor; Department of Natural Resources; Maryland Department of Transportation; Maryland Energy Administration; Military Department; Public Service Commission; Department of Legislative Services

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