SB 334

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Maryland General Assembly
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FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 334 (Senator Feldman)
Finance Economic Matters

Long-Term Power Purchase Agreements for Renewable Energy Workgroup and Minority-Owned and Women-Owned Businesses Study

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This bill establishes the Long-Term Power Purchase Agreements for Renewable Energy Workgroup, to be staffed by the Public Service Commission (PSC). The bill also requires the Maryland Department of Transportation (MDOT) and the Governor's Office of Small, Minority, and Women Business Affairs (GOSBA), in consultation with PSC, the Office of the Attorney General (OAG), and the General Assembly, to initiate a study to evaluate whether the enactment of remedial measures to assist minority-owned and women-owned businesses in the renewable energy industry and market would comply with specified requirements. In addition, GOSBA, in coordination with MDOT and OAG, must develop race-neutral and gender-neutral approaches for addressing the needs of minority-owned and women-owned businesses seeking to participate in the renewable energy industry and market; the bill establishes related requirements. **The bill takes effect June 1, 2022, and terminates June 30, 2023.**

Fiscal Summary

State Effect: It is assumed that there is no effect in FY 2022, despite the bill's June 1, 2022 effective date. Special fund expenditures increase by $750,200 in FY 2023 for PSC; special fund revenues increase correspondingly from assessments imposed on public service companies. Transportation Trust Fund (TTF) expenditures increase by between $30,000 and $90,000 in FY 2023 for the disparity study.

Local Effect: The bill does not directly affect local government finances or operations.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Long-Term Power Purchase Agreements for Renewable Energy Workgroup

The workgroup must undertake a review of existing long-term contracts and power purchase agreements for renewable energy in other states (including specified programs in the District of Columbia and Massachusetts) and study the feasibility of implementing long-term power purchase agreements for renewable energy contracts in the State. The workgroup must also make recommendations on (1) whether a long-term power purchase agreement program for renewable energy could be implemented in Maryland through legislation or regulatory action; (2) the potential risks and benefits to the electricity market in Maryland of establishing a long-term power purchase agreement program; (3) the cost of requiring PSC to administer a long-term power purchase agreement program; (4) appropriate protections for investor-owned electric companies with customers in the State that may participate in the program; (5) the potential benefits to Maryland ratepayers; and (6) any protections necessary to ensure fair oversight of long-term power purchase agreements for renewable energy entered into by investor-owned electric companies.

By December 1, 2022, the workgroup must report its findings and recommendations to the General Assembly. Workgroup members may not receive compensation but are entitled to reimbursement for expenses under the standard State travel regulations, as provided in the State budget.

Studies Related to Minority-owned and Women-owned Businesses in the Renewable Energy Industry and Market

MDOT and GOSBA – in consultation with PSC, OAG, and the General Assembly – must initiate a study on the renewable energy industry to evaluate whether the enactment of remedial measures to assist minority-owned and women-owned businesses in the renewable energy industry and market would comply with a specified court case and specified federal or constitutional requirements.

PSC must require electric companies and other entities participating in the renewable energy industry to provide to PSC, by August 1, 2022, any information determined to be necessary to assess the need for remedial measures to assist minority-owned and women-owned businesses in the renewable energy industry and market in the State. The required information may include a list of the entity's expenditures, broken down by State fiscal year from fiscal 2018 through 2022, including, for each expenditure, (1) a description of the work performed; (2) the dollar value of the expenditure; (3) whether the work was performed by the electric company, another entity participating in the renewable energy industry, or a contractor or subcontractor; and (4) the name of the contractor or subcontractor, if applicable. In turn, PSC must provide the information collected to MDOT by August 15, 2022. All information provided by an electric company or entity must (1) constitute confidential commercial and financial information and (2) be treated as confidential by PSC and the State; information may only be used for the purposes authorized by the bill and disclosed to the public in an anonymized or aggregated format.

MDOT and GOSBA must report their findings and recommendations to the Governor and the General Assembly by December 1, 2022, as specified.

In addition, GOSBA, in consultation with MDOT and OAG, must develop race-neutral and gender-neutral approaches for addressing the needs of minority-owned and women-owned businesses seeking to participate in the renewable energy industry and market. By December 1, 2022, GOSBA must report the approaches developed pursuant to the bill to the Legislative Policy Committee, as specified.

MDOT, PSC, and GOSBA must provide staff for the studies required under the bill.

Current Law:

Renewable Energy

For information on the State's Renewable Energy Portfolio Standard, see the **Appendix – Renewable Energy Portfolio Standard**.

Minority Business Enterprise Program

MDOT is the agency designated by the Board of Public Works under § 14-303(b) of the State Finance and Procurement Article to certify and decertify minority business enterprises (MBEs). For more information on the State's MBE program, see the **Appendix – Minority Business Enterprise Program**.

State Fiscal Effect:

Public Service Commission

PSC advises that it currently does not have the expertise or resources necessary to staff the workgroup and to handle the bill's incremental workload, including (1) making judgments and recommendations regarding the feasibility of implementing long-term power purchase agreements for renewable energy contracts, based upon detailed assessments of future market prices for renewable energy credits and electricity and (2) making recommendations relating to minority-owned and women-owned business participation in the renewable energy industry and market in the State.

Accordingly, special fund expenditures increase by $750,219 in fiscal 2023, which accounts for a 30-day start-up delay. This estimate reflects the cost of hiring one part-time contractual attorney and one part-time contractual program manager to staff the workgroup, as well as $650,000 in consultant services to evaluate the feasibility of long-term renewable energy contracts and to make recommendations regarding minority-owned and women-owned business participation in the renewable energy industry. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Contractual Positions (Part-time)	2.0
Salaries and Fringe Benefits	$86,063
Consultant Services	650,000
Other Operating Expenses	14,156
Total FY 2023 PSC Expenditures	**$750,219**

This estimate assumes that PSC expenditures, including the contractual positions, terminate at the end of fiscal 2023. Special fund revenues increase correspondingly from assessments imposed on public service companies.

This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State's implementation of the federal Patient Protection and Affordable Care Act.

Any expense reimbursements for commission members are assumed to be minimal and absorbable within existing budgeted resources.

Maryland Department of Transportation and the Governor's Office of Small, Minority, and Women Business Affairs

MDOT advises that TTF expenditures are expected to increase between $30,000 and $90,000 in fiscal 2023 to complete the required disparity study, as well as to develop race- and gender-neutral approaches as required by the bill. MDOT notes, however, that completion of the required disparity analysis may divert agency and contractor resources from the ongoing statewide disparity study for the reauthorization of the MBE program and, therefore, may delay its completion. MDOT further advises that the schedule and quality of the required analyses is dependent on the data submitted to MDOT by PSC.

GOSBA advises that the bulk of the costs required to fulfill its responsibilities under the bill will be borne by MDOT, given that MDOT is the contract administrator for all projects that require disparity analyses. Accordingly, this estimate assumes that GOSBA can implement the bill's requirements using existing resources.

Small Business Effect: Small, minority-owned, and women-owned businesses in the renewable energy industry may benefit from any remedial measures and race- and gender-neutral approaches implemented as a result of the disparity study findings and the bill. In addition, small business entities in the renewable energy industry may bear administrative costs to provide to PSC any information that is determined to be necessary for the purposes of assessing the need for remedial measures to assist minority-owned and women-owned businesses in the renewable energy industry (*e.g.*, a list of the entity's expenditures, broken down by State fiscal year from fiscal 2018 through 2022).

Additional Information

Prior Introductions: None.

Designated Cross File: HB 624 (Delegate Brooks) - Economic Matters.

Information Source(s): Maryland Department of Transportation; Governor's Office of Small, Minority, and Women Business Affairs; Office of People's Counsel; Public Service Commission; Department of Legislative Services

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Appendix – Renewable Energy Portfolio Standard

General Overview

Maryland's Renewable Energy Portfolio Standard (RPS) was enacted in 2004 to facilitate a gradual transition to renewable sources of energy. There are specified eligible ("Tier 1" or "Tier 2") sources as well as carve-outs for solar, offshore wind, and, beginning in 2023, new geothermal systems. Electric companies (utilities) and other electricity suppliers must submit renewable energy credits (RECs) equal to a percentage of their retail electricity sales specified in statute each year or else pay an alternative compliance payment (ACP) equivalent to their shortfall. Historically, RPS requirements have been met almost entirely through RECs, with negligible reliance on ACPs. The Maryland Energy Administration (MEA) must use ACPs for purposes related to renewable energy, as specified.

In 2022, the requirements are 30.1% from Tier 1 sources, including at least 5.5% from solar, and 2.5% from Tier 2 sources.

Recent Significant Changes to Overall Percentage Requirements

- Chapter 757 of 2019 significantly increased the percentage requirements, which now escalate over time to a minimum of 50% from Tier 1 sources, including 14.5% from solar, by 2030.

- Chapter 673 of 2021 reduced the amount of solar energy required under the RPS each year from 2022 through 2029, while leaving the nonsolar requirement generally unchanged, before realigning with the previous requirements beginning in 2030. The Act also extended Tier 2 in perpetuity at 2.5%.

- Chapter 164 of 2021 created an additional carve-out for post-2022 geothermal systems in Tier 1 beginning in 2023.

Limited Applicability to Municipal Electric Utilities and Electric Cooperatives

As RPS percentage requirements have grown over time, legislation has been enacted to limit the effect on municipal electric utilities and electric cooperatives. Tier 1 percentage requirements for municipal electric utilities are limited to 20.4% in total beginning in 2021, including at least 1.95% from solar energy and up to 2.5% from offshore wind. Municipal electric utilities are also exempt from Tier 2 after 2021. Electric cooperatives are exempt from future increases to the solar carve-out beyond 2.5%, and the RPS does not apply to Choptank Electric Cooperative.

Renewable Energy Credits

Generally, a REC is a tradable commodity equal to one megawatt-hour of electricity generated or obtained from a renewable energy generation resource. In other words, a REC represents the "generation attributes" of renewable energy – the lack of carbon emissions, its renewable nature, *etc*. A REC has a three-year life during which it may be transferred, sold, or redeemed. REC generators and electricity suppliers are allowed to trade RECs using a Public Service Commission (PSC) approved system known as the Generation Attributes Tracking System, a trading platform designed and operated by PJM Environmental Information Services, Inc., that tracks the ownership and trading of RECs.

Eligible Sources

Tier 1 sources include wind (onshore and offshore); qualifying biomass; methane from anaerobic decomposition of organic materials in a landfill or wastewater treatment plant; geothermal; ocean, including energy from waves, tides, currents, and thermal differences; a fuel cell that produces electricity from specified sources; a small hydroelectric plant of less than 30 megawatts; poultry litter-to-energy; waste-to-energy; refuse-derived fuel; and thermal energy from a thermal biomass system. Eligible solar sources include photovoltaic cells and residential solar water-heating systems commissioned in fiscal 2012 or later. Tier 2 includes only large hydroelectric power plants.

Chapter 673 of 2021 excluded black liquor, or any product derived from black liquor, from Tier 1 beginning in 2022. Chapter 691 of 2021 included raw or treated wastewater used as a heat source or sink for heating or cooling in Tier 1 beginning in 2021.

Trends in Compliance Costs, Renewable Energy Credit Prices, and Resources Used

Electricity suppliers retired 14.3 million RECs at a cost of $223.2 million in 2020, as shown in **Exhibit 1**. This continues a multi-year trend of increasing compliance costs and, generally, average REC prices. Notably, the solar carve-out ($122.9 million) cost was higher than the remaining Tier 1 requirement ($99.8 million) – the first time since 2011.

In 2020, wind (56.7%), municipal solid waste (11.8%), black liquor (11.5%), and small hydroelectric (8.5%) were the primary energy sources used for Tier 1 RPS compliance. This continues a multi-year trend of increasing reliance on wind energy. Maryland facilities generated 4.3 million RECs in 2019: approximately 2.7 million Tier 1 RECs and 1.7 million Tier 2 RECs. Many RECs can be used for compliance in both Maryland and other surrounding states, although there are geographic and energy source restrictions.

Exhibit 1
RPS Compliance Costs and REC Prices
2016-2020

	2016	2017	2018	2019	2020
Compliance Costs ($ Millions)					
Tier 1 Nonsolar	$88.2	$50.0	$56.4	$79.3	$99.8
Tier 1 Solar	45.6	21.3	27.4	55.2	122.9
Tier 2	1.4	0.7	1.0	0.06	0.4
Total	**$135.2**	**$72.0**	**$84.8**	**$134.5**	**$223.2**
Average REC Price ($)					
Tier 1 Nonsolar	$12.22	$7.14	$6.54	$7.77	$8.24
Tier 1 Solar	110.63	38.18	31.91	47.26	66.10
Tier 2	0.96	0.47	0.66	1.05	1.06

REC: renewable energy credit
RPS: Renewable Energy Portfolio Standard

Note: Numbers may not sum to total due to rounding.

Source: Public Service Commission

Related Studies Reports

PSC must submit an RPS compliance report to the General Assembly each year. The most recent report, which contains historical data through 2020, can be found here.

The Power Plant Research Program (PPRP) in the Department of Natural Resources has frequently been required to conduct RPS studies. PPRP submitted a final report on a comprehensive RPS study in December 2019, which can be found here. PPRP also submitted a related required study on nuclear energy at that time, which can be found here. A supplemental study on the overall costs and benefits of increasing the RPS to a goal of 100% by 2040 is due by January 1, 2024.

Chapter 164 of 2021 required MEA to staff a new Geothermal Energy Workgroup and complete a technical study on the potential impact of expanding and incentivizing the use of geothermal heating and cooling systems in the State. The Act required a related report to be submitted to the General Assembly by December 1, 2021.

Appendix – Minority Business Enterprise Program

The State's Minority Business Enterprise (MBE) program requires that a statewide goal for MBE contract participation be established biennially through the regulatory process under the Administrative Procedure Act. The biennial statewide MBE goal is established by the Special Secretary for the Governor's Office of Small, Minority, and Women Business Affairs (GOSBA), in consultation with the Secretary of Transportation and the Attorney General. In a year in which there is a delay in establishing the overall goal, the previous year's goal applies. The Special Secretary is also required to establish biennial guidelines for State procurement units to consider in deciding whether to establish subgoals for different minority groups recognized in statute. In a year in which there is a delay in issuing the guidelines, the previous year's guidelines apply. The Maryland Department of Transportation (MDOT) is the State's MBE certification agency.

In August 2013, GOSBA announced a new statewide goal of 29% MBE participation that applied to fiscal 2014 and 2015; as no new goal has been established, the 29% goal remains in effect for fiscal 2022. GOSBA issued subgoal guidelines in July 2011 and then updated them effective August 2020, as summarized in **Exhibit 1.** The guidelines state that subgoals may be used only when the overall MBE goal for a contract is greater than or equal to the sum of all recommended subgoals for the appropriate industry, plus two. MBE prime contractors may count their own work for up to 50% of a contract's MBE goal and up to 100% of any contract subgoal. Their full participation counts toward the State's 29% goal.

Exhibit 1
Subgoal Guidelines for Minority Business Enterprise Participation

	Construction	Architectural/ Engineering	Maintenance	Information Technology	Services	Supplies/ Equipment
African American	8%	7%	9%	10%	-	6%
Hispanic	-	-	3%	-	2%	2%
Asian	-	-	2%	-	3%	-
Women	11%	10%	-	10%	10%	8%
Total	**19%**	**17%**	**14%**	**20%**	**15%**	**16%**
Total +2	**21%**	**19%**	**16%**	**22%**	**17%**	**18%**

Source: Governor's Office of Small, Minority, and Women Business Affairs

There are no penalties for agencies that fail to reach the statewide target. Instead, agencies are required to use race-neutral strategies to encourage greater MBE participation in State procurements.

History and Rationale of the Minority Business Enterprise Program

In 1989, the U.S. Supreme Court held in the *City of Richmond v. J.A. Croson Co.* that state or local MBE programs using race-based classifications are subject to strict scrutiny under the equal protection clause of the Fourteenth Amendment to the U.S. Constitution. In addition, the ruling held that an MBE program must demonstrate clear evidence that the program is narrowly tailored to address actual disparities in the marketplace for the jurisdiction that operates the program. As a result, prior to each reauthorization of the State's MBE program, the State conducts a disparity study to determine whether there is continued evidence that MBEs are underutilized in State contracting.

The disparity study completed in 2017 serves as the basis for the most recent reauthorization of the MBE program. It found continued and ongoing disparities in the overall annual wages, business earnings, and rates of business formation between nonminority males and minorities and women in Maryland. For instance, average annual wages for African Americans (both men and women) were 37% lower than for comparable nonminority males; average annual wages for nonminority women were 33% lower than for comparable nonminority males. It also found continued disparities in the use of MBEs by the State compared to their availability in the marketplace to perform work in designated categories of work. For instance, African American-owned construction businesses were paid 5.1% of State construction contract dollars, but they made up 10.3% of the construction sector in the relevant State marketplace. Nonminority women-owned construction businesses were paid 7.5% of State construction contract dollars but made up 13.7% of the construction sector. According to the analysis, these differences were large and statistically significant.

The MBE program is scheduled to terminate July 1, 2022; Chapter 340 of 2017, which reauthorized the program for the eighth time since its inception, required a new disparity study to be completed by September 2021 to inform the subsequent reauthorization process. However, MDOT has requested an extension to September 2023 due to delays in procuring a consultant to conduct the study. The program may be reauthorized in its current form pending the completion of the study. **Exhibit 2** provides MBE participation rates for major Executive Branch agencies based on contract awards made during fiscal 2020, the most recent year for which data is available.

Exhibit 2
Minority Business Enterprise Participation Rates, by Agency
Fiscal 2020

Cabinet Agency	% Participation
Aging	0.6%
Agriculture	7.2%
Budget and Management	0.8%
Commerce	9.1%
Education	3.7%
Environment	9.0%
Executive Department	1.4%
General Services	16.5%
Health	10.5%
Higher Education Commission	1.1%
Housing and Community Development	20.9%
Human Services	7.2%
Information Technology	3.7%
Juvenile Services	5.6%
Labor	6.0%
Military	3.3%
Natural Resources	2.5%
Planning	6.6%
State Police	24.0%
Public Safety and Correctional Services	11.3%
Transportation – Aviation Administration	25.0%
Transportation – Motor Vehicle Administration	38.6%
Transportation – Office of the Secretary	22.0%
Transportation – Port Administration	14.3%
Transportation – State Highway Administration	18.4%
Transportation – Transit Administration	17.0%
Transportation – Transportation Authority	20.3%
Statewide Total[1]	**14.1%**

[1] Includes the University System of Maryland, Morgan State University, St. Mary's College of Maryland, and non-Cabinet agencies.

Source: Governor's Office of Small, Minority, and Women Business Affairs

Requirements for Minority Business Enterprise Certification

An MBE is a legal entity, other than a joint venture, that is:

- organized to engage in commercial transactions;
- at least 51% owned and controlled by one or more individuals who are socially and economically disadvantaged; and
- managed by, and the daily business operations of which are controlled by, one or more of the socially and economically disadvantaged individuals who own it.

A socially and economically disadvantaged individual is defined as a citizen or legal U.S. resident who is African American, Native American, Asian, Hispanic, physically or mentally disabled, a woman, or otherwise found by the State's MBE certification agency to be socially and economically disadvantaged. An MBE owned by a woman who is also a member of an ethnic or racial minority group may be certified as being owned by both a woman and by a member of a racial or ethnic minority, but for the purpose of participating on a contract as an MBE, it can only be counted as one or the other.

A socially disadvantaged individual is someone who has been subject to racial or ethnic prejudice or cultural bias within American society because of his or her membership in a group and without regard to individual qualities. An economically disadvantaged individual is someone who is socially disadvantaged whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities compared with those who are not socially disadvantaged. An individual with a personal net worth in excess of $1.5 million, adjusted annually for inflation, is not considered economically disadvantaged. The inflation-adjusted limit for calendar 2022 is $1,847,024.