SB 525

Department of Legislative Services

Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 525 (Senator Feldman)
Finance

Public Utilities - Energy Distribution Planning and Required Labor Standards

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This bill establishes a Distribution System Planning Workgroup to (1) study and make recommendations relating to energy distribution planning processes and implementation, as specified, and (2) serve in an ongoing advisory capacity to the Public Service Commission (PSC) for energy distribution system planning. The bill establishes related reporting requirements. By January 1, 2024, PSC must adopt regulations regarding energy distribution planning processes and implementation, as specified, and utilities must bear the burden of demonstrating compliance with PSC's regulations in rate cases. In addition, the bill imposes wage and labor requirements for contractors and subcontractors working on projects for investor-owned electric companies and gas and electric companies relating to electric infrastructure, as specified.

Fiscal Summary

State Effect: Special fund expenditures increase by $866,200 in FY 2023; future years reflect annualization, inflation, and ongoing costs. Special fund revenues increase correspondingly from assessments imposed on public service companies. The potential effect on electricity rates is discussed separately below.

(in dollars)	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
SF Revenue	$866,200	$684,900	$697,200	$709,000	$721,300
SF Expenditure	$866,200	$684,900	$697,200	$709,000	$721,300
Net Effect	$0	$0	$0	$0	$0

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

Local Effect: The bill does not directly affect local government finances or operations. The potential effect on electricity rates is discussed separately below.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Statement of Policy Goals

The bill states that it is the goal of the State that the electric distribution grid support the State's policy goals with regard to (1) decarbonization and greenhouse gas reductions; (2) renewable energy; (3) equity; (4) family-sustaining employment; and (5) achieving energy distribution resiliency and reliability in a cost-effective manner.

Distribution System Planning Workgroup

The bill establishes the Distribution System Planning Workgroup, comprised of members representing State agencies, investor-owned electric companies, electric customers, low-income and minority communities, environmental groups, labor, trade groups, and other individuals, as specified. PSC must provide staff for the workgroup. Workgroup members may not receive compensation but are entitled to reimbursement for expenses under the standard State travel regulations.

The workgroup must study and make recommendations regarding energy distribution planning processes and implementation that promote (1) decarbonization, including high levels of distributed energy resources and electric vehicles; (2) giving priority to vulnerable communities in the development of distributed energy resources and electric vehicle infrastructure; (3) energy efficiency and conservation; (4) meeting increased load requirements due to the electrification of buildings and transportation; (5) labor standards in all elements of electric grid modernization; (6) electric grid resiliency and adaptation; (7) peak load management; (8) integration of vehicles with the electric grid and other bidirectional power flows from storage assets; (9) effective use of demand response and other nonwire alternatives; (10) transparent stakeholder participation in ongoing energy distribution planning processes; and (11) comparisons among alternative approaches, including nonwire alternatives and noncapital options, including repair, maintenance, and operation of existing resources in a cost-effective manner.

The workgroup must maximize transparency for stakeholder participation, including providing stakeholder access to nonconfidential utility information.

Reporting Requirements for the Workgroup and PSC

By January 1, 2023, the workgroup must report its findings and recommendations to PSC. After submitting the required report, the workgroup must continue to serve in an ongoing advisory capacity to PSC for energy distribution system planning.

By December 1, 2022, and each year thereafter, PSC must submit a report to the General Assembly with information regarding the current status of electric distribution grid evolution, including information addressing the topics (described below) that are covered in the regulations adopted regarding energy distribution planning processes and implementation.

PSC Regulations Relating to Energy Distribution Planning Processes and Implementation

By January 1, 2024, PSC must adopt regulations (with input from the workgroup) governing energy distribution planning processes and implementation. PSC's regulations must promote (1) decarbonization, including high levels of distributed energy resources and electric vehicles; (2) giving priority to vulnerable communities in the development of distributed energy resources and electric vehicle infrastructure; (3) energy efficiency and conservation; (4) meeting increased load due to electrification of buildings and transportation; (5) labor standards in all elements of electric grid modernization; (6) electric grid resiliency and adaptation; (7) peak load management; (8) integration of vehicles with the electric grid and other bidirectional power flows from storage assets; (9) effective use of demand response and other nonwire alternatives; (10) transparent stakeholder participation in ongoing energy distribution planning processes; and (11) comparisons among alternative approaches, including nonwire alternatives and noncapital options, including repair, maintenance, and operation of existing resources in a cost-effective manner.

In addition, PSC's regulations must (1) be developed with consideration of the State's greenhouse gas reduction goals; (2) account for benefits that may not be readily quantifiable; (3) identify least regrets investments; (4) establish metrics for assessing benefits; (5) use a discount rate that reflects State regulatory and environmental goals; (6) account for incremental utility operations and maintenance costs, incremental utility capital costs, and incremental transmission and energy distribution costs; and (7) account for reductions in other costs, losses, and customer outages, as specified, as well as for increases in system reliability, safety, resilience, distributed energy resource integration, power quality, customer satisfaction, customer flexibility and choice, and other environmental benefits.

In rate cases, utilities must bear the burden of demonstrating compliance with PSC's regulations through quantification of benefits and objective and verifiable standards.

Accessing Federal Funds

PSC and the Maryland Energy Administration (MEA) must coordinate efforts with utilities to apply for and access federal funds, including those made available under the federal

Infrastructure Investment and Jobs Act, to meet the State's policy goals for the electric distribution grid.

Wage and Labor Requirements

An investor-owned electric company or gas and electric company must require a contractor or subcontractor that is working on a project involving the construction, reconstruction, installation, demolition, restoration, or alteration of any electric infrastructure of the company (and any related traffic control activities) to (1) pay the area prevailing wage for each trade employed, including wages and fringe benefits; (2) offer health care and retirement benefits to the employees working on the project; (3) participate in an apprenticeship program registered with the State for each trade employed on the project; (4) establish and execute a plan for outreach, recruitment, and retention of State residents, as specified, to perform work on the project; (5) have been in compliance with federal and State wage and hour laws for the previous three years; (6) be subject to all State reporting and compliance requirements; and (7) maintain all appropriate licenses in good standing.

Current Law: PSC initiated Public Conference 44 (PC 44) in 2016 to address grid modernization and the future of electric distribution systems. In 2021 – subsequent to Maryland's participation in a two-year, multistate task force on comprehensive electricity planning – PSC established a distribution system planning workgroup to examine possible reforms of the distribution planning process.

Chapter 12 of 2021 required investor-owned gas and/or electric utilities to require contractors and subcontractors on specified underground projects to pay their employees at least the applicable prevailing wage rate.

See the **Appendix – Maryland's Prevailing Wage Law** for additional information, including a discussion of estimated project costs associated with paying the prevailing wage.

State Fiscal Effect:

Public Service Commission

PSC advises that it currently does not have the staffing expertise or resources necessary to assist the workgroup and fulfill the bill's requirements to develop comprehensive regulations relating to energy distribution systems. Accordingly, special fund expenditures for PSC increase by $866,226 in fiscal 2023, which accounts for the bill's October 1, 2022 effective date. This estimate reflects the cost of hiring three public service engineers and two regulatory economists to study and make recommendations regarding distribution planning outcomes. It also reflects consultant services to help the workgroup develop its report and to help draft regulations for PSC's consideration. This estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	5.0
Salaries and Fringe Benefits	$329,511
Consultant Services	500,000
Other Operating Expenses	36,715
Total FY 2023 PSC Expenditures	**$866,226**

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses. This estimate assumes that annual expenditures for consultant services decrease to $250,000 in future years, reflecting an ongoing yet reduced advisory role for the workgroup. Overall, special fund revenues increase correspondingly from assessments imposed on public service companies.

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

Maryland Energy Administration

MEA advises that it likely needs to hire a program manager to fulfill its responsibilities under the bill and to continue its work with PSC relating to grid modernization and electricity planning. MEA estimates that costs to do so total approximately $100,000 annually beginning in fiscal 2023.

The Department of Legislative Services advises, however, that it is unclear at this time that MEA needs to hire a program manager solely to meet the bill's requirements. Accordingly, it is assumed that MEA can work with PSC to coordinate efforts with utilities to apply for and access federal funds using existing staff. To the extent existing resources prove insufficient, MEA may request an additional position through the annual budget process.

Potential Federal Funds

As noted above, the bill requires PSC and MEA to coordinate efforts with utilities to apply for and access federal funds, including those made available under the federal Infrastructure Investment and Jobs Act, to meet the State's policy goals for the electric distribution grid. The extent to which this may result in an increase in federal fund revenues for the State is unknown and has not been reflected in this analysis.

Small Business Effect: Complying with the bill's wage and labor requirements is likely to meaningfully impact small contractors and subcontractors working on covered projects for investor-owned utilities.

Additional Comments: The potential effect on electricity rates resulting from the bill's requirements cannot be reliably estimated at this time. However, costs incurred by utilities (whether arising from distribution planning requirements or the wage and labor requirements for contractors and subcontractors) may be recovered through future rate cases, which are paid by all utility customers, including the State, local governments, and small businesses.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 88 (Delegate Charkoudian) - Economic Matters.

Information Source(s): Maryland Department of the Environment; Maryland Energy Administration; Office of People's Counsel; Public Service Commission; Department of Legislative Services

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js/lgc

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Appendix – Maryland's Prevailing Wage Law

Contractors and subcontractors working on eligible public works projects in Maryland must pay their employees the prevailing wage rate. "Public works" are structures or works, including a bridge, building, ditch, road, alley, waterwork, or sewage disposal plant, that are constructed for public use or benefit or paid for entirely or in part by public money.

Eligible public works projects are:

- those carried out by the State;
- any public work for which at least 25% of the money used for construction is State money; and
- specified projects in tax increment financing districts if the local governing body approves of the application of prevailing wages.

Any public works contract valued at less than $250,000 is not required to pay prevailing wages. The State prevailing wage rate also does not apply to (1) any part of a public works contract funded with federal funds for which the contractor must pay the prevailing wage rate determined by the federal government; (2) specified construction projects carried out by public service companies under order of the Public Service Commission; or (3) local House or Senate initiatives that receive State funds in the capital budget.

Prevailing wages are wages paid to at least 50% of workers in a given locality who perform the same or similar work on projects that resemble the proposed public works project. If fewer than 50% of workers in a job category earn the same wage, the prevailing wage is the rate paid to at least 40% of those workers. If fewer than 40% receive the same wage rate, the prevailing wage is calculated using a weighted average of local pay rates. The State Commissioner of Labor and Industry is responsible for determining prevailing wages for each public works project and job category based on annual surveys of contractors and subcontractors working on both public works and private construction projects.

The commissioner has the authority to enforce contractors' compliance with the prevailing wage law. Contractors found to have violated the prevailing wage law must pay restitution to the employees and liquidated damages to the public body in the amount of $20 a day for each laborer who is paid less than the prevailing wage or $250 per laborer per day if the employer knew or reasonably should have known of the obligation to pay the prevailing wage. If an employer fails to comply with an order by the commissioner to pay restitution, either the commissioner or an employee may sue the employer to recover the difference between the prevailing wage and paid wage. The court may order the employer to pay double or triple damages if it finds that the employer withheld wages or fringe benefits willfully and knowingly or with deliberate ignorance or reckless disregard for the law.

The Governor must include at least $385,000 in the budget each year for the Prevailing Wage Unit within the Maryland Department of Labor (MDL).

The University System of Maryland (USM), Morgan State University (MSU), St. Mary's College of Maryland, and the Maryland Stadium Authority (MSA) are all exempt from the prevailing wage law. However, USM, MSU, and MSA all voluntarily comply with prevailing wage requirements for contracts that exceed the $500,000 threshold.

History of the Prevailing Wage

The federal Davis-Bacon Act, originally enacted in 1931, requires contractors working on federal public works contracts valued at more than $2,000 to pay their employees the prevailing local wage for their labor class, as determined by the U.S. Secretary of Labor. The general intent of the law, and similar state and local laws, is to stabilize local wage rates by preventing unfair bidding practices and wage competition. Thirty-two states and the District of Columbia currently have prevailing wage laws; since 1979, nine states have repealed their prevailing wage laws.

Maryland adopted a prevailing wage law in 1945 (Chapter 999), but it only applied to road projects in Allegany, Garrett, and Washington counties. In 1969, the statute was amended to include State public works contracts of $500,000 or more. There have been periodic changes to the law and the definition of "prevailing wage." In 1983, the law was broadened to include public works projects in which the State funds 50% or more of the total project costs and 75% or more in the case of public schools. Chapter 208 of 2000 reduced the prevailing wage threshold for public schools from 75% to 50% of construction costs, thereby bringing school construction projects in line with prevailing wage requirements for other public works projects. Chapters 281 and 282 of 2014 further lowered the State funding threshold for school construction projects to 25% of total construction costs, thereby requiring the vast majority of public school construction projects in the State to pay the prevailing wage, subject to the $500,000 contract value threshold.

The number of prevailing wage projects has risen dramatically in recent years. MDL advises that, during fiscal 2021, its prevailing wage unit monitored 941 projects, down slightly from 1,091 projects in fiscal 2020, but significantly higher than 496 in fiscal 2014. To accommodate the increase in projects, the number of prevailing wage investigators increased in fiscal 2016 from three to six; as of January 2022, there are four investigators, with a fifth investigator in the latter stages of recruitment.

Six Maryland jurisdictions – Allegany, Baltimore, Charles, Montgomery, and Prince George's counties and Baltimore City – have local prevailing wage laws requiring public works projects in the jurisdiction to pay prevailing wages. Montgomery County's prevailing wage ordinance does not apply to school construction projects, but beginning in fiscal 2023, the county will pay prevailing wages on all school construction projects, regardless of the level of State or county participation.

Research on the Effects of Prevailing Wage on Contract Costs

The Department of Legislative Services (DLS) has reviewed research on the effect of prevailing wage laws on the cost of public works contracts and has found inconsistent and/or unreliable results. The primary challenge confronted by all prevailing wage researchers is identifying an appropriate "control group" consisting of projects of similar type, timing, and location that do not pay the prevailing wage. In most jurisdictions that require a prevailing wage, all projects of a specified type and size are subject to it, so there is no natural control group. Some researchers have compared project costs in states or localities before and after they adopted prevailing wage requirements, but their findings are clouded by the difference in time, during which construction costs changed and other factors were not consistent. Another deficiency in the research is that it almost always relies on project bid prices (*i.e.*, the anticipated cost prior to the beginning of construction) rather than actual final costs. As most construction projects experience change orders or cost overruns affecting their cost, reliance on bid prices negatively affects the validity of the findings. Therefore, research findings related to the effect of the prevailing wage on project costs are inconsistent and often inconclusive. A similar review of research conducted by MDL (at the time, the Department of Labor, Licensing, and Regulation) for the Task Force to Study the Applicability of the Maryland Prevailing Wage Law also concluded that "data limitations create difficulty for researchers on both sides of the issue."

Local school systems occasionally solicit side-by-side bids with and without prevailing wages to help them decide whether they want to accept the full State match (and, thus, be subject to the prevailing wage) or a lesser State match without being subject to the prevailing wage. Data provided to the Public School Construction Program by Anne Arundel, Carroll, Frederick, Howard, and Washington counties, from 2012 through 2015, shows that the cost differential between bids with and without prevailing wages for 266 individual bids submitted for 26 different school construction and renovation projects averaged 11.7%, with a range from 0% to 49%. As with other research data, these represent bid prices, not actual construction costs. An independent analysis of the Maryland side-by-side bid data concluded that factors other than prevailing wages, including bid timing and the level of competition for the bids, accounted for most of the differences between the prevailing wage and nonprevailing wage bids.

One area of the research in which there is a general consensus, and which is supported by the U.S. Bureau of Labor Statistics, is that labor costs represent between 20% and 30% of construction costs (with materials and site costs making up most of the rest). Therefore, a 10% gap between prevailing wages and market wages could theoretically increase total contract costs by about 2.5%, and a 20% gap in wages could increase total contract costs by about 6%. Given the empirical evidence that prevailing wages tend to be higher than nonprevailing wages and that labor costs are a significant portion of overall project costs, DLS believes that it is reasonable to expect that the prevailing wage requirement adds between 2% and 5% to the cost of a public works project. Given the inconsistency and inconclusiveness of the empirical research, however, actual effects may vary by project, with some projects exhibiting higher cost differences and others experiencing negligible differences.