HB 864

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 864 (Delegates Crosby and Qi)
Economic Matters Education, Energy, and the Environment

Energy Efficiency and Conservation Plans

This bill generally alters the EmPOWER Maryland Energy Efficiency Program by (1) explicitly requiring electric companies, gas companies, and the Department of Housing and Community Development (DHCD) to adopt energy efficiency, conservation, demand response, and beneficial electrification measures to support greenhouse gas (GHG) emissions reductions; (2) setting new annual targets for GHG emissions reductions, including specific targets for DHCD; and (3) expanding the applicability of EmPOWER to specified gas companies and the Choptank Electric Cooperative. The changes are primarily made by repealing existing provisions and establishing a new Part that includes a mixture of existing requirements and processes and new requirements. The bill also requires the Public Service Commission (PSC) to establish a related working group. **The bill takes effect July 1, 2024.**

Fiscal Summary

State Effect: General fund expenditures for the Maryland Department of the Environment (MDE) increase by $403,200 in FY 2025; future years reflect annualization and the elimination of one-time costs. Special fund revenues and expenditures for DHCD increase significantly beginning in FY 2027, as discussed below; amounts may exceed $12.0 million in FY 2027 and $24.0 million annually thereafter. PSC and other affected State agencies can generally implement the bill with existing resources, although special fund expenditures for the Maryland Energy Administration (MEA) may increase by $50,000 in FY 2025. The effect on utility rates is discussed separately below.

(in dollars)	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
SF Revenue	$0	$0	-	-	-
GF Expenditure	$403,200	$185,400	$193,700	$202,100	$211,000
SF Expenditure	$50,000	$0	$0	$0	$0
Net Effect	($453,200)	($185,400)	($193,700)	($202,100)	($211,000)

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

Local Effect: Local governments are affected to the extent they receive different, likely higher, funding levels under the bill through DHCD's EmPOWER programs beginning in FY 2027. The effect on utility rates is discussed separately below.

Small Business Effect: Meaningful.

Analysis

Bill Summary:

Repeal of Existing Requirements

Existing provisions related to the EmPOWER Maryland Energy Efficiency Act, both the general provisions for electric companies and those for DHCD related to low income programs, are repealed.

New General Requirements

Subject to review and PSC approval, each electric company, each gas company other than specified small gas companies, and DHCD must develop and implement programs and services to encourage and promote the efficient use and conservation of energy, demand response, and beneficial electrification by consumers, electric companies, gas companies, and DHCD in support of the GHG emissions reduction goals and targets required under Title 12, Subtitle 2 of the Environment Article. The requirement does not apply to a gas company with annual gross revenues of less than 3% of the total gross annual revenues for all public service companies in the State during the same calendar year. (This provision, except for Choptank Electric Cooperative, aligns with current EmPOWER program participation by electric and gas companies.)

As directed by PSC, each municipal electric or gas utility, each small gas company exempt from the requirement above, and each small rural electric cooperative must include energy efficiency and conservation, demand response, and beneficial electrification programs or services as part of their service to their customers. (This requirement is similar to the requirement in current law and distinguishes the State's large utilities from the smaller utilities for purposes of EmPOWER.)

PSC must encourage and promote the efficient use and conservation of energy in support of the GHG emissions reduction goals and targets required under the Environment Article, established by PSC under the bill, and specified for DHCD in the bill, by:

- requiring each electric company and gas company to establish any program or service that PSC determines to be appropriate and cost-effective;
- adopting rate-making policies that provide, through a surcharge line item on customer bills:
  - full cost recovery of reasonably incurred costs for the programs and services, including full recovery on a current basis by January 1, 2028;
  - by December 31, 2032, the elimination of any unpaid costs and unamortized costs that (1) existed on December 31, 2024, or were incurred before January 1, 2028, and (2) were accrued for the purposes of achieving EmPOWER goals;
  - compensation for any unpaid costs and unamortized costs described above at no more than each electric or gas company's average cost of outstanding debt;
  - reasonable financial performance incentives and penalties for investor-owned electric companies and gas companies, as appropriate; and
- ensuring that adoption of electric customer choice and gas customer choice does not adversely impact these goals and targets.

Cost Effective Greenhouse Gas Emissions Reductions Programs

By January 1, 2025, and every three years thereafter starting in 2027, PSC must, by regulation or order, require each electric company and each affected gas company to develop and implement a plan that (1) covers each ratepayer class; (2) starting in 2027, covers a three-year program cycle; and (3) achieves the GHG emissions reduction targets established for the company under the bill through cost-effective energy efficiency and conservation programs and services, demand response programs and services, and beneficial electrification programs and services. The bill specifies processes for determining appropriate targets in 2025 and 2026 (mid-EmPOWER cycle).

For 2025 and 2026, and for each three-year program cycle starting in 2027, PSC must establish a GHG emissions reductions target for each electric company and each affected gas company. When doing do, PSC must measure the GHG emissions from electricity and gas, and the intensities of those emissions, using current data and projections from MDE. The targets must be measured in metric tons and relative to the GHG emissions associated with the electric or gas company's weather-normalized gross retail sales and losses in a baseline year, as determined by PSC, and described in further detail below. PSC must also take into consideration the most recent final climate pollution reduction plan adopted under § 2-1205 of the Environment Article when establishing the GHG emissions reduction targets.

Specific to electric companies, as soon as possible in 2024, and at least eight months before the filing deadline for plans after 2024, PSC must establish GHG emission reductions targets for each electric company plan that will achieve at least the GHG emissions reduction equivalent of specified annual electricity savings percentages, calculated as a percentage of the electric company's 2016 weather-normalized gross retail sales and electricity losses. The percentages are 2.0% in 2024, 2.25% in 2025 and 2026; and 2.5% each year thereafter.

Specific to gas companies, by January 1, 2025, and every three years thereafter starting in 2027, PSC must establish GHG emissions reduction targets for each gas company plan that will achieve at least the GHG emissions reduction equivalent, measured as specified, of the gas savings targets established by PSC for the 2021-2023 EmPOWER cycle.

PSC may prioritize long-lived GHG emissions reductions measures in the plans, as specified. Beginning January 1, 2025, at least 80% of the GHG emissions reductions counted toward each electric company's and each gas company's GHG emissions reductions targets must come from behind-the-meter programs, which may include deployment of energy storage facilities.

Contributions to GHG emissions reduction goals and targets in a plan of an electric company or a gas company may include recovery of the reasonable and prudent costs from programs that are not behind-the-meter in a base rate proceeding, subject to PSC approval. Contributions may not include the increased adoption of electric vehicles.

Specific Greenhouse Gas Emissions Reduction Targets for the Department of Housing and Community Development and Related Requirements

Beginning January 1, 2025, and by January 1 every three years thereafter starting in 2027, DHCD must procure or provide to low-income individuals energy efficiency and conservation programs and services, demand response programs and services, and beneficial electrification programs and services that are on a trajectory to achieve GHG reductions of at least 0.9% of a 2016 baseline after 2027. The requirement applies to the 2025-2033 time period. MDE must determine the 2016 baseline for low-income households. When establishing the GHG emissions reduction targets for DHCD, PSC must measure the GHG emissions (in metric tons) from electricity using current data and projections from MDE. These reductions count toward the overall statewide GHG emissions reduction target. The bill specifies a process for determining appropriate DHCD targets in 2025 and 2026 (mid-EmPOWER cycle).

DHCD may procure or provide savings that are achieved through other funding sources if those sources meet the standards of the EmPOWER surcharge or the U.S. Department of Energy; in that case, the savings count toward EmPOWER targets. If directed by PSC in 2024, and by September 1 every three years starting in 2026, DHCD must submit its plans for any programs or services procured or provided under the bill to PSC for review and approval.

DHCD must adopt regulations for weatherization of leased or rented residences to achieve specified benefits and goals under the bill. In addition, DHCD may only approve contractors who follow specified labor practices, such as paying at least 150% of the State minimum wage, providing paid leave, and offering retirement benefits.

DHCD must develop a plan to coordinate funding sources and leverage the greatest funding possible to support a whole home approach by addressing health and safety upgrades, weatherization, energy efficiency, and other general maintenance for low-income housing. The plan must coordinate funding among various State and federal programs and provide certain other services, as specified. DHCD must collaborate with members of the Green and Healthy Task Force established by Chapter 572 of 2023 and identify other interested stakeholders to develop the plan. By December 31, 2024, DHCD must submit the plan to the Governor and the General Assembly.

Additionally, DHCD must collaborate with the task force to develop a second plan, including a budget, timeline, and potential funding sources, to provide energy efficiency retrofits to all low-income households by 2032. By December 1, 2024, DHCD must submit the plan to the General Assembly.

DHCD, MEA, and other State units must apply for all federal funding that may become available to carry out the above DHCD-specific requirements.

Plan Details, Review, and Approval

PSC must issue, as soon as possible in 2024, and at least eight months before the filing deadline for plans after 2024, an order that determines the GHG emissions reduction targets required under the bill for each company and DHCD.

Generally, if directed by PSC in 2024, and by September 1 every three years beginning in 2026, each electric company, each affected gas company, and DHCD must submit its plan to PSC. However, for an electric company or gas company that did not previously submit an EmPOWER plan, the deadline to submit the first plan is December 1, 2024. Prior to submitting the plans to PSC, the entities must consult with PSC technical staff, the Office of People's Counsel (OPC), MEA, and MDE regarding the design and adequacy of its plans for achieving their relevant GHG emissions reduction targets.

Each plan must detail a proposal for achieving GHG emissions reduction targets for three subsequent calendar years (this is generally how EmPOWER works under current law). Each plan must include specified relevant information, such as anticipated costs and GHG emissions reductions.

PSC must review each plan to determine whether it is adequate and cost effective (across specified metrics and categories) in achieving the GHG emissions reduction targets established under the bill. PSC must consider any written findings provided by MEA, MDE, and OPC regarding plan design and adequacy. In approving, modifying, or denying a plan, PSC must consider specified factors, such as cost-effectiveness and the impact on rates. Programs and services offered by DHCD are not required to be cost effective.

MDE must prepare and submit to PSC an analysis regarding the adequacy of each plan in supporting the State's GHG emissions reduction goals in the Environment Article, established by PSC under the bill, and required for DHCD under the bill.

Plan Implementation Updates, Monitoring, and Reports

Every six months, each electric company, each gas company, and DHCD must provide to PSC an update on plan implementation, as specified. PSC must monitor and analyze the impact of each program and service to ensure that the outcome of each program and service provides the best possible results.

By May 1 each year, PSC must report to the General Assembly on (1) the status of programs and services approved under the bill, as specified; (2) a recommendation for the appropriate funding level to adequately fund the programs and services; (3) the per capita electricity consumption and the winter and summer peak demand for the previous calendar year; and (4) beginning in 2026, progress made toward reducing GHG emissions under the bill.

Prohibition on Mandatory Energy Reduction

Notwithstanding any other law, PSC may not require or allow an electric company or a gas company to require a customer to authorize the electric company or gas company to control the amount of the customer's electricity usage or gas usage. However, a customer may provide consent to participate in a utility program that does so.

Promotion of Available Incentives

Each electric company and gas company must promote the availability of federal and State rebates, tax credits, and incentives that can be used to support energy efficiency investments, energy efficient and non-fossil-fuel-powered appliances and cooking equipment, breaker box upgrades, and portable heating and cooling equipment. PSC must adopt regulations to implement this requirement.

Disparity Study

The certification agency designated by the Board of Public Works under the State's minority business enterprise (MBE) law (*i.e.*, the Maryland Department of Transportation (MDOT)) and the Governor's Office of Small, Minority, and Women Business Affairs (GOSBA), in consultation with DHCD, the Office of the Attorney General, and the General Assembly, must initiate a study regarding the energy efficiency and conservation services used by DHCD to evaluate whether the enactment of remedial measures to assist minority and women-owned businesses in the energy efficiency and conservation services industry and market would comply with the U.S. Supreme Court decision in *City of Richmond v. J. A. Croson Co., 488 U.S. 469 (1989)*, and any subsequent federal or constitutional requirements.

By December 31, 2026, MDOT and GOSBA must submit the findings of the study to the Legislative Policy Committee so that the General Assembly may review the findings before the 2027 session.

An identical disparity study was required by uncodified language in Chapter 572, with a reporting deadline of December 31, 2025. That requirement remains in effect under current law and the bill.

Working Group on the EmPOWER Maryland Program and Moderate-income Households

PSC must establish a working group on the EmPOWER Maryland Program and moderate-income households. The purpose of the working group is to study and make recommendations to PSC and the General Assembly on coordination of activities and benefits under the EmPOWER Maryland Program between the utilities and DHCD so that moderate-income households may obtain the most efficient and cost-effective assistance under the program. The study and recommendations must include:

- development of a practical definition of "moderate-income" for use in assessing the scope of available activities, potentially beneficial extensions of activities, and associated costs under the program;
- an assessment of existing utility-based activities funded by the program and available to moderate-income households;
- proposals for extending utility-based activities and coordinating those activities with corresponding activities of DHCD with respect to low-income households under the program, plus an assessment of the related costs and benefits of doing so;
- identification of areas of potential overlap between utility-based and DHCD-based activities that may be harmonized to avoid duplicating efforts and promote more efficient means to provide assistance to moderate-income households; and

- identification and development of regulatory and legislative changes needed to implement recommended coordination, extension, and expansion of program activities to benefit moderate-income households.

By July 1, 2025, PSC must report to the Governor and the General Assembly on the working group study and recommendations.

Current Law:

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. That legislation also required PSC to conduct a related study by July 1, 2022. Chapter 38 of 2022 (the Climate Solutions Now Act) further increased the goal to 2.25% per year in 2025 and 2026 and to 2.5% annually thereafter. The Act also specified that the core objective of the reductions must include development and implementation of a portfolio of mutually reinforcing goals, including GHG emissions reduction, energy savings, net customer benefits, and reaching underserved customers. The Act included related administrative requirements in uncodified language.

DHCD participates in EmPOWER Maryland through two special fund programs: the Low Income Energy Efficiency Program (LIEEP); and the Multifamily Energy Efficiency and Housing Affordability (MEEHA) Program. LIEEP helps low-income households undertake energy conservation projects in their homes at no charge, while MEEHA promotes energy efficiency and affordability in the State's multifamily rental housing developments for low- and moderate-income households. Approved program costs are recovered by electric companies on customer bills.

Chapter 572 required DHCD to procure or provide energy efficiency and conservation (EE&C) programs and services for electricity customers for the 2024-2026 EmPOWER Maryland Program cycle, subject to specified requirements. The EE&C programs and services must be designed to achieve a target annual incremental gross energy savings, compared to 2016, of at least 0.53% in 2024, 0.72% in 2025, and 1.0% in 2026.

In December 2022, PSC issued Order No.90456 requiring that all unamortized EmPOWER program costs and interest as of December 31, 2023, which exceeded $800 million at the time, be paid for in full by the completion of the 2027-2029 EmPOWER program cycle. The order also required a change in future cost recovery to gradually move to full expensing of costs. Paying off the balance will increase the EmPOWER surcharge in the short-term but will ultimately save ratepayers from paying a rate of return to the utilities on the accrued balance.

In December 2023, PSC issued Order No. 90957 authorizing the 2024-2026 EmPOWER program cycle with GHG emissions reduction targets (based on statutory energy savings targets) for the EmPOWER utilities (all four investor-owned electric companies, plus Southern Maryland Electric Cooperative and Washington Gas) and DHCD. In that order, PSC also delayed the unamortized EmPOWER program cost paydown period by two years (which, while the order does not say explicitly, should be by the end of 2031).

Maryland Greenhouse Gas Emissions Reduction Targets and the Climate Solutions Now Act

The Climate Solutions Now Act made broad changes to the State's approach to reducing statewide GHG emissions and addressing climate change. Among other things, the Act accelerated previous statewide GHG emissions reductions targets originally established under the Greenhouse Gas Emissions Reduction Act by requiring the State to develop plans, adopt regulations, and implement programs to (1) reduce GHG emissions by 60% from 2006 levels by 2031 and (2) achieve net-zero statewide GHG emissions by 2045. The Act also established new and altered existing energy conservation requirements for buildings and increased and extended the EmPOWER Maryland program, as described above. In December 2023, MDE published *Maryland's Climate Pollution Reduction Plan*, which was developed to implement Chapter 38.

Minority Business Enterprises

MDOT is designated in State regulations as the State's MBE certification agency. In 1989, the U.S. Supreme Court held in *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.

State Fiscal Effect: General fund expenditures for MDE increase beginning in fiscal 2025 for additional staff and consulting expenses. Special fund revenues and expenditures for DHCD increase beginning in fiscal 2025 to expand EmPOWER programs. PSC can implement the required changes to the EmPOWER program with existing budgeted resources, as can OPC. Special fund expenditures for MEA may increase by $50,000 in fiscal 2025 for consultant costs related to program evaluations. Except for MDE, these agencies are already generally involved with EmPOWER planning and would be in the future under current law. PSC and any participating State entities can handle the requirements related to the working group with existing budgeted resources.

MDOT is already required to conduct an identical disparity study on an earlier timeline under Chapter 572, so no additional costs are assumed in this analysis.

The effect on utility rates is discussed in the Additional Comments section below.

Maryland Department of the Environment

Utilities and DHCD must consult with various State entities, including MDE, regarding the design and adequacy of their plans for achieving the GHG emissions reduction goals and targets established by PSC under the bill. MDE must also (1) conduct a GHG analysis regarding the adequacy of each plan in supporting GHG emissions reductions goals and (2) establish a 2016 baseline emissions level for use by DHCD. MDE advises that it cannot conduct such analyses and consult on the three-year planning cycle with existing resources. MDE requires two staff for ongoing plan review and analysis and anticipates a one-time consulting expense of $150,000 to establish a GHG analysis framework that considers legal, programmatic, and accounting implications for the various EmPOWER programs. Costs are assumed to be paid for with general funds, although special funds may be available.

Accordingly, general fund expenditures increase by $403,218 in fiscal 2025, which accounts for the bill's July 1, 2024 effective date. This estimate reflects the cost of hiring two energy policy analysts to assist with ongoing plan review and analysis. It includes salaries, fringe benefits, one-time start-up costs, ongoing operating expenses, and a one-time consulting expense of $200,000 to establish the GHG analysis framework.

Positions	2.0
Salaries and Fringe Benefits	$188,166
Contractual Services	200,000
Other Operating Expenses	15,052
Total FY 2025 MDE Expenditures	**$403,218**

Future year expenditures reflect salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses and the elimination of one-time costs. MDE expenditures may further increase if ongoing requirements are more significant than anticipated.

Department of Housing and Community Development

Unlike the other agencies listed above with advisory and regulatory responsibilities, DHCD must directly implement GHG emissions reduction plans under the bill. This analysis assumes that DHCD conforms and expands where necessary its existing EmPOWER programs – which were already significantly expanded by Chapter 572 – in order to meet the bill's new requirements. Further, as EmPOWER Maryland must continue beyond the current 2024-2026 planning cycle under current law, ongoing DHCD savings/costs are assumed to be incremental.

DHCD estimated incremental costs to implement the bill begin with EmPOWER program spending beginning in calendar 2027, as the existing program authorization for the 2024-2026 cycle is assumed to meet the GHG goals under the bill. DHCD estimates that an approximately $12.0 million in additional funding is required in fiscal 2027 and approximately $24.0 million is required annually thereafter. The majority of incremental costs each year are for grants provided through its EmPOWER programs to eligible recipients, with costs of less than $1.0 million annually for eight additional staff. As a point of reference, DHCD's approved EmPOWER funding is approximately $75.0 million in 2025, $112.5 million in 2026, and $167.5 million in 2027.

The Department of Legislative Services cannot independently verify DHCD's costs at this time but advises that they appear to be a reasonable estimate for determining the potential magnitude of the effect. Ultimately, costs will depend on how DHCD chooses to implement the bill going forward (DHCD's programs are an expensive component of EmPOWER on a per-unit basis).

DHCD's costs are assumed to be paid for by EmPOWER surcharge revenues. Accordingly, special fund revenues increase significantly – likely by amounts similar to those described above – from additional EmPOWER surcharge revenue to the extent necessary to cover additional costs. The amount and timing will depend on the amount and timing of approved cost collection by PSC.

DHCD's EmPOWER surcharge-funded expenditures may be offset to the extent that the State is able to apply for and obtain federal funding to assist with implementation of the bill; however, that funding would be unavailable for other related uses.

Local Fiscal Effect: Local weatherization agencies receive funds through LIEEP to assist in program implementation, and local housing authorities receive funds through MEEHA. Local governments are affected to the extent they receive different, likely higher, funding levels under the bill through DHCD's EmPOWER programs beginning in fiscal 2027. The effect on utility rates is discussed in the Additional Comments section below.

Small Business Effect: Small businesses engaged in projects under the EmPOWER program are affected by potential changes in program funding levels. Small businesses engaged in weatherization and energy saving projects for DHCD benefit from a significant increase in program expenditures, although such businesses must comply with the specified labor practices, including paying 150% of the State minimum wage, providing paid leave, and offering retirement benefits. The effect on utility rates is discussed in the Additional Comments section below.

Additional Comments:

Utility Rates

The bill makes several significant changes to the EmPOWER program, such as changing annual targets to explicit GHG emissions reductions, altering allowable program components, and reducing the utility rate of return on certain accrued costs.

PSC advises that it is unclear if the bill will cause costs greater than those required to comply with the current requirement to meet a 2.0% to 2.5% energy efficiency goal, although it does not predict an instance where costs will decrease. The EmPOWER surcharge is assessed on utility customers to pay for the program. Accordingly, all utility customers – including the State, local governments, and small businesses – will ultimately pay for additional expenditures incurred under the bill and funded through allowable surcharges and/or base rates when those costs are recovered by electric and gas companies. Of note, DHCD EmPOWER expenditures are typically funded by residential ratepayers.

Transition to Greenhouse Gas Abatement Goals

A July 2022 PSC report discusses the transition of EmPOWER Maryland from energy savings goals to GHG abatement goals and PSC's recommendation that the General Assembly adopt GHG abatement goals. The report incorporates intent language in the Climate Solutions Now Act. The Maryland Commission on Climate Change also made related recommendations in its 2023 annual report.

Additional Information

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See SB 905 of 2023 and HB 1035 of 2023.

Designated Cross File: None.

Information Source(s): Maryland Department of the Environment; Public Service Commission; Office of People's Counsel; Maryland Energy Administration; Maryland Department of Transportation; Department of Commerce; Department of General Services; Department of Housing and Community Development; Department of Human Services; Maryland Department of Health; Maryland Department of Labor; Office of the Attorney General; Governor's Office of Small, Minority, and Women Business Affairs; Board of Public Works; Department of Budget and Management; City of Hagerstown; Maryland Association of Counties; Maryland Municipal League; Department of Legislative Services

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