HB 521

Department of Legislative Services

Maryland General Assembly
2026 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 521 (Delegate Chisholm, *et al.*)
Environment and Transportation

Electric Companies and Gas Companies - Customer Bill Surcharge - Repeal

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This emergency bill repeals the authorization for electric and gas companies to include a surcharge on customer bills to recover specified costs associated with energy efficiency and conservation programs required by the Public Service Commission (PSC) under the EmPOWER Maryland Energy Efficiency Program. The bill also makes specified conforming changes.

Fiscal Summary

State Effect: PSC can implement the repeal of the EmPOWER surcharge and establish an alternative funding mechanism for the program with existing resources. Special fund revenues for the Department of Housing and Community Development (DHCD) may decrease significantly in FY 2026 and 2027 (until an alternative funding source is established), as discussed below; any decrease in special fund revenues for DHCD results in a corresponding decrease in special fund expenditures and a corresponding increase in general fund expenditures. Special fund expenditures for the Office of People's Counsel (OPC) may increase beginning as early as FY 2027; special fund revenues increase correspondingly. The potential effect on electricity and gas prices is discussed in the Additional Comments section below.

Local Effect: The bill is not anticipated to materially affect local government finances or operations, as discussed below. The potential effect on electricity and gas prices is discussed in the Additional Comments section below.

Small Business Effect: Minimal, as discussed below. The potential effect on electricity and gas prices is discussed in the Additional Comments section below.

Analysis

Bill Summary: The bill repeals the requirement that PSC adopt rate-making policies allowing utilities to recover specified EmPOWER Maryland Program costs through a surcharge on customer bills. Accordingly, it eliminates the statutory authority for utilities to continue levying the EmPOWER surcharge.

The bill makes related conforming changes, including:

- repealing a provision that PSC must require utilities participating in the EmPOWER Maryland Program to disclose to customers (1) that the surcharge includes the cost of paying down unpaid costs and unamortized costs that were accrued over time by programs and services required by PSC dating back to 2008 and (2) the period of time that the surcharge will include excess charges to pay down those costs; and
- altering § 9-20B-05 of the State Government Article to remove language authorizing the use of the Strategic Energy Investment Fund (SEIF) to offset EmPOWER surcharges imposed on ratepayers.

Current Law:

Public Service Commission

PSC must supervise and regulate public service companies, which includes electric and gas companies, subject to its jurisdiction to (1) ensure their operation in the interest of the public and (2) promote adequate, economical, and efficient delivery of utility services in the State without unjust discrimination. In doing so, PSC must consider the public safety, the economy of the State, the maintenance of fair and stable labor standards for affected workers, the conservation of natural resources, the preservation of environmental quality, the achievement of the State's climate commitments for reducing greenhouse gas (GHG) emissions, and the protection of a public service company's infrastructure against cybersecurity threats. PSC must also enforce compliance with legal requirements by public service companies.

A public service company must charge "just and reasonable rates" for the regulated services that it renders. Generally, PSC has the power to set a just and reasonable rate of a public service company, as a maximum rate, minimum rate, or both. A "just and reasonable rate" means a rate that (1) does not violate any provision of the Public Utilities Article; (2) fully considers and is consistent with the public good; and (3) except for rates of a common carrier, will result in an operating income to the public service company that yields, after reasonable deduction for depreciation and other necessary and proper expenses and reserves, a reasonable return on the fair value of the public service company's property used and useful in providing service to the public.

EmPOWER Maryland Program – Generally

Program History

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. The Climate Solutions Now Act (CSNA) of 2022 (Chapter 38), which is discussed below, further increased the goal to 2.25% per year in 2025 and 2026 and to 2.5% annually thereafter.

Chapter 539 of 2024 altered the EmPOWER Maryland Program by, among other things, explicitly requiring each electric company, each large gas company, and DHCD to develop and implement energy efficiency, conservation, demand response, and beneficial electrification programs to achieve specified GHG emission reduction goals and targets, subject to review and PSC approval.

Program Requirements

Under the current program, PSC must encourage and promote the efficient use and conservation of energy in support of these goals and targets by requiring each electric company and gas company to establish any program or service that PSC determines to be appropriate and cost-effective. Additionally, PSC is required to adopt rate-making policies that, through a surcharge line item (the EmPOWER surcharge) on customer bills, provide:

- 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 of these unpaid costs and unamortized costs at not more than each electric and gas company's average cost of outstanding debt; and
- reasonable financial performance incentives and penalties for investor-owned electric companies and gas companies, as appropriate.

PSC must, by regulation or order, require electric and gas companies currently participating in EmPOWER to disclose (1) that the surcharge includes the cost of paying down unpaid costs and unamortized costs that were accrued over time by programs and services required by PSC dating back to 2008 and (2) the period of time that the surcharge will include excess charges to pay down those costs. The disclosure must be in a form and format readily understandable to the average customer.

As directed by PSC, each municipal electric or gas utility, each small gas company exempt from the requirement above, each small rural electric cooperative, and, if required in accordance with a determination process established by Chapter 539, each midsize 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 distinguishes the State's large utilities from the smaller utilities for purposes of EmPOWER.)

EmPOWER Maryland Program – Department of Housing and Community Development

As part of the EmPOWER Maryland Program, 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, determined as specified. The requirement applies to the 2025-2033 time period. The reductions count toward the overall GHG emissions reduction targets under the EmPOWER Maryland Program.

When calculating the achievement of GHG emissions reduction targets under the EmPOWER Maryland Program, DHCD may procure or provide savings that are achieved through all funding sources, to the extent that the savings from those funding sources are achieved (1) in a manner consistent with requirements of the U.S. Department of Energy or (2) in a manner otherwise consistent with the energy savings requirements applicable to those funding sources.

DHCD participates in the EmPOWER Maryland Program through two special fund programs: (1) the Low Income Energy Efficiency Program (LIEEP); and (2) 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.

Climate Solutions Now Act

CSNA 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.

Strategic Energy Investment Fund

The Maryland Energy Administration (MEA) administers SEIF, which, among other revenue sources, receives funds from the sale of carbon dioxide emissions allowances under the Regional Greenhouse Gas Initiative and alternative compliance payments generated through the State's renewable energy portfolio standard. Additionally, SEIF will receive a portion of corporate income tax revenues from qualified data centers that are operational on or after January 1, 2026.

MEA is required to use SEIF for specified uses, such as providing rate relief by offsetting electricity rates of residential customers, including an offset of EmPOWER surcharges imposed on those customers under Title 7, Subtitle 2, Part II of the Public Utilities Article.

State Fiscal Effect: Although the bill repeals the EmPOWER surcharge, it does not repeal the EmPOWER Maryland Program itself. PSC remains statutorily obligated to (1) encourage and promote the efficient use and conservation of energy in support of specified GHG emission reduction targets and (2) require utilities to establish any program or service that it determines to be appropriate and cost effective. The bill also does not alter DHCD's statutory mandate to procure or provide specified programs and services to low-income individuals to achieve its GHG emission reduction targets. As a result, although the bill repeals the funding source for the EmPOWER Maryland Program, this analysis assumes the program continues and that an alternative funding source is established. A discussion of the resulting effects by agency is included below.

Public Service Commission

Consistent with its general rate-setting authority, PSC anticipates replacing the EmPOWER surcharge through either an increase in base rates or an alternative funding mechanism, which could include a new surcharge. PSC advises that it can implement the repeal of the EmPOWER surcharge and establish an alternative funding mechanism for the program using existing resources.

Department of Housing and Community Development

As noted above, DHCD participates in the EmPOWER Maryland Program through the LIEEP and MEEHA programs. Because the bill does not alter DHCD's statutory mandate as it relates to the EmPOWER Maryland Program, this analysis assumes that DHCD continues to administer the LIEEP and MEEHA programs and that overall DHCD expenditures are unchanged by the bill. However, as noted above, the bill eliminates the current funding source for these programs (the EmPOWER surcharge).

Assuming PSC implements an alternative funding mechanism for the EmPOWER Maryland Program that generates revenues commensurate to the revenues currently generated from the EmPOWER surcharge, special fund revenues for DHCD are unchanged. Until such a mechanism is established, however, special fund revenues for DHCD may decrease significantly, as discussed below.

The Department of Legislative Services notes that it will likely take time for PSC to identify and establish a new revenue source for the program. As a result, special fund revenues for DHCD may decrease temporarily. The duration of any such decrease depends on how quickly PSC reaches a determination regarding a new funding mechanism and how long it takes until revenues from the new funding mechanism begin to accrue. For example, if PSC determines that adjusting base rates is the appropriate approach, a significant lag may occur before special fund revenues from an increase in base rates begin to accrue. (Rate cases are formal proceedings that require substantial time to adjudicate and, under State law, may take up to 210 days to complete.) Accordingly, special fund revenues for DHCD may decrease significantly in fiscal 2026 (due to the bill's emergency status) and by up to tens of millions of dollars in fiscal 2027. For purposes of this analysis, it is assumed that special fund revenues for DHCD normalize by fiscal 2028 at the latest; this analysis assumes that an alternative funding mechanism is in place by then.

Any temporary decrease in special fund revenues for DHCD results in a corresponding decrease in special fund expenditures. Because it is assumed that DHCD continues to administer the LIEEP and MEEHA programs, general funds are needed to backfill for the loss of special funds until a new funding mechanism is in place. Accordingly, general fund expenditures for DHCD increase correspondingly to the decrease in EmPOWER surcharge revenues (until that new funding mechanism is in place).

Office of People's Counsel

OPC advises that its costs may increase if PSC pursues replacement of EmPOWER surcharge revenues through base rate proceedings. Under current law, OPC staff evaluate the efficacy and costs of the EmPOWER Maryland Program on an ongoing basis, through stakeholder groups and regularly scheduled proceedings. However, if OPC's program review must instead occur within base rate cases, its evaluations must be completed within the timelines governing those proceedings. OPC advises that additional resources, including technical experts, may be required to perform such work, although the office cannot reliably estimate the associated costs at this time.

Accordingly, special fund expenditures for OPC may increase, likely beginning in fiscal 2027 (despite the bill's emergency status). As OPC is funded through assessments on public service companies, any increase in special fund expenditures is funded through a corresponding increase in special fund revenues from assessments imposed on public service companies.

Local Fiscal Effect: DHCD directs a portion of its funding under the EmPOWER Maryland Program to local governments for energy efficiency and electrification upgrades. Because this analysis assumes that DHCD expenditures are unchanged under the bill, local government finances and operations are not anticipated to be materially affected.

Small Business Effect: DHCD contracts extensively with small businesses to perform energy upgrade work in the homes of LIEEP participants. Because this analysis assumes that DHCD expenditures are unchanged under the bill, the bill is not anticipated to have a meaningful impact on small businesses.

Additional Comments: Although the bill repeals the EmPOWER surcharge, the bill is not anticipated to have a material effect on ratepayers. As discussed above, PSC has signaled its intent to replace the EmPOWER surcharge with an alternative funding mechanism. Whether this is accomplished through base rate proceedings, a new surcharge, or another funding mechanism, the overall effect on electricity and gas prices is anticipated to be minimal.

PSC advises that the bill may have a minor impact on ratepayers due to repealing provisions requiring investor-owned utilities, through the EmPOWER surcharge, to be compensated for specified unpaid and unamortized costs at no more than their average cost of outstanding debt. Prior to the enactment of these provisions under Chapter 539, PSC authorized recovery of such costs using a weighted average cost of capital (WACC), which included returns on both equity and debt, in base rate cases. If PSC authorizes utilities to again recover outstanding costs using WACC in future base rate proceedings, electricity rates may increase minimally.

Additional Information

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See HB 1535 of 2025.

Designated Cross File: None.

Information Source(s): Maryland Department of the Environment; Department of Housing and Community Development; Department of Human Services; Department of

Natural Resources; Maryland Energy Administration; Office of People's Counsel; Public Service Commission; Department of Legislative Services

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