HB 1035

Department of Legislative Services

Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 1035 (Delegate Wilson)
Economic Matters Education, Energy, and the Environment

Energy Efficiency and Conservation Plans and Green and Healthy Task Force

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 gas companies. The bill also establishes the Green and Healthy Task Force, staffed by DHCD, and contains a number of related studies and reporting requirements. The changes are primarily made through a combination of repealing all existing provisions and establishing a new Part that includes a mixture of existing requirements and processes and new requirements. **The bill takes effect July 1, 2023.**

Fiscal Summary

State Effect: General fund expenditures for the Maryland Department of the Environment (MDE) increase by $352,000 in FY 2024. Future years reflect annualization and the elimination of one-time costs. Special fund revenues and expenditures for DHCD increase significantly – likely by multiple tens of millions annually – beginning in FY 2024, as discussed below. Special fund expenditures for the Maryland Energy Administration (MEA) may increase beginning in FY 2024. The Public Service Commission (PSC) and other affected State agencies can generally implement the bill with existing resources. The effect on utility rates is discussed separately below.

(in dollars)	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
SF Revenue	-	-	-	-	-
GF Expenditure	$352,000	$184,400	$192,600	$201,100	$211,700
SF Expenditure	-	-	-	-	-
Net Effect	($352,000)	($184,400)	($192,600)	($201,100)	($211,700)

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. 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 are repealed.

New General Requirements

Subject to review and PSC approval, each electric company, each gas company, 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 specified in the Environment Article.

As directed by PSC, each municipal electric or gas utility and each electric cooperative that serves a population of less than 250,000 in its service territory must include energy efficiency and conservation, demand response, and beneficial electrification programs or services as part of their service to their customers. (This requirement, as it relates to energy efficiency and conservation, exists in current law and distinguishes the State's large investor-owned utilities and electric cooperative from municipal electric utilities and small cooperatives 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 in 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 on or before January 1, 2027;
- on or before December 31, 2031, the elimination of any unpaid costs and unamortized costs that existed prior to December 31, 2023, or were incurred before January 1, 2027, and 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 do not adversely impact these goals and targets.

Cost Effective Greenhouse Gas Emissions Reductions Programs

By January 1, 2024, PSC must, by regulation or order, require each electric company and each gas company to develop and implement a plan that (1) covers each ratepayer class; (2) 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.

For each three-year program cycle, PSC must establish a GHG emissions reductions target for each electric company and each gas company, using specified data. PSC must use the GHG emissions resulting from the direct consumption of gas and electricity in Maryland buildings in 2020, as determined by MDE, as the baseline for determining the reductions. For 2024 through 2032, PSC must determine an overall statewide GHG emissions reductions target based on an average annual reduction of at least 1.8% of the baseline. PSC may prioritize long-lived GHG emissions reductions measures in the plan, as specified. Beginning January 1, 2024, 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.

Contributions to GHG emissions reduction goals and targets in a plan of an electric company or a gas company may, notwithstanding the general requirement that program costs be collected through a customer surcharge, 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 Reduction Targets for the Department of Housing and Community Development and Related Requirements

Beginning January 1, 2024, and every three years thereafter, DHCD must procure or provide to low- and moderate-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 2020 baseline after 2026. The requirement applies to the 2024-2032 time period. MDE must determine the 2020 baseline for low- and moderate-income households. These reductions count toward the overall statewide GHG emission reduction target.

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. By September 1, 2023, and every three years thereafter, 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, also established by the bill, and identify other interested stakeholders to develop the plan. By December 31, 2023, 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 2031. By December 1, 2023, DHCD must submit the plan to the General Assembly.

DHCD, MEA, and other State agencies 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 2023, an order that fully allocates among electric companies, gas companies, and DHCD the total GHG emissions reduction target determined for each company and DHCD.

Generally, by September 1, 2023, and every three years thereafter, each electric company, each 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 delayed to December 1, 2023. 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. DHCD's plans must include a definition of "low- or moderate-income individual" to be used in its programs and services.

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 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 specified 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 May 1, 2025, progress made toward reducing GHG emissions under the bill.

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.

Green and Healthy Task Force

The Green and Healthy Task Force, established with specified membership and staffed by DHCD, must:

- beginning July 1, 2023, meet quarterly for a period of three years;
- advance the alignment, branding, and coordination of resources to more effectively deliver green and healthy housing for low-income households in the State;
- examine the public and private resources needed to address the housing needs of low-income communities;
- develop policy and statutory recommendations to eliminate barriers to low-income households achieving healthy, energy-efficient, affordable, and low-emissions housing; and
- engage with interested parties and collaborate with other entities that can help advance the goals of the task force, including experts in the field of healthy, energy-efficient, and low-emissions housing.

By July 1, 2024, and each July 1 thereafter through 2027, the task force must report its findings and recommendations to the Secretary of Health, the Secretary of the Environment, PSC, the Governor, and the General Assembly.

Task force members may not receive compensation but are entitled to reimbursement for expenses.

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*, and any subsequent federal or constitutional requirements.

By December 31, 2025, 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 2026 session.

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.

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.

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.

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 2024 for additional staff and consulting expenses. Special fund revenues and expenditures for DHCD increase beginning in fiscal 2024 to expand EmPOWER programs. PSC can implement the required changes to the EmPOWER program with existing budgeted resources, as can OPC. Except for MDE, these agencies are already generally involved with EmPOWER planning and would be in the future under current law. MDOT can generally conduct the required disparity study with existing budgeted resources. 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 efficient use and conservation of energy in support of the GHG emissions reduction goals and targets in the Environment Article and set by PSC under the bill. Additionally, MDE is required to conduct a GHG analysis regarding the adequacy of each plan in supporting the GHG emissions reduction goals and establish two 2020 baseline levels. MDE advises that it cannot conduct such analyses and consult on this three-year planning cycle – and potentially other reporting cycles – 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 $352,037 in fiscal 2024, which accounts for the bill's July 1, 2023 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 $150,000 to establish the GHG analysis framework.

Positions	2.0
Salaries and Fringe Benefits	$186,689
Contractual Services	150,000
Other Operating Expenses	15,348
Total FY 2024 State Expenditures	**$352,037**

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.

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 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 costs to implement the bill are unknown. However, as a point of reference, DHCD's estimate of the cost associated with a similar, but not identical, requirement in other legislation was approximately $39.8 million in fiscal 2024, $101.7 million in fiscal 2025, $171.6 million in fiscal 2026, $213.9 million in fiscal 2027, and $214.2 million in fiscal 2028. DHCD advises that actual costs under the bill may be higher or lower than these amounts, due to differences in the requirements.

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). Regardless, costs are likely substantial – in the multiple tens of millions range. For context, spending on EmPOWER energy efficiency and conservation programs totaled $252.2 million in 2021, with DHCD spending $23.0 million of that amount.

DHCD's costs are assumed to be paid for by EmPOWER surcharge revenues. Accordingly, special fund revenues increase significantly – likely by tens of millions annually – 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. For context, utility revenue requirements for the EmPOWER energy efficiency and conservation programs totaled about $277.4 million in 2021.

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.

Other Operational Effects

This estimate assumes that DHCD can provide staff for the Green and Healthy Task Force and develop required plans with the additional staff and resources necessary to otherwise implement the bill. It further assumes that costs for other agencies related to the bill are generally minimal and/or absorbable within existing budgeted resources, with limited exceptions.

MEA and other State agencies must apply for federal funding that may become available to implement the DHCD-specific requirements under the bill and may have to hire additional staff to do so (assuming the agency would not have otherwise applied for such funding). Therefore, special fund expenditures for the Strategic Energy Investment Fund may increase to hire one additional staff beginning in fiscal 2024.

Assuming DHCD can provide certain industry information about its EmPOWER contractors, MDOT can generally conduct the required disparity study with existing resources. If not, Transportation Trust Fund expenditures increase by approximately $15,000 to $25,000 for data analysis in fiscal 2024 or 2025, prior to the disparity analysis being conducted at no further cost under existing contracts.

State Building Energy Rebates

The bill includes beneficial electrification programs and services in the EmPOWER program. The Department of General Services (DGS) advises that from fiscal 2021 through 2023, the department has received, or is expected to receive, more than $2.0 million in rebates from the EmPOWER program for lighting and other energy savings projects. In response to the Climate Solutions Now Act, DGS has already established an electrification program in its buildings. If electrification projects are also eligible for rebates under the bill, rebate revenues could increase, allowing the department to pursue additional projects at State facilities. While these are potential benefits, the amount and timing of any effects are unknown and therefore not reflected in the above estimate.

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. 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 altering the baseline year, changing annual targets to explicit GHG emissions reductions, altering allowable program components, establishing a significant DHCD subcomponent for low- and moderate-income customers, including gas companies, extending the current payback schedule for certain accrued costs, and reducing the utility rate of return on those 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. Still, 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 any 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.

Potential Jeopardization of Federal Funds

PSC, MEA, MDE, and DHCD advise that the language in the bill related to the use of federal funds for DHCD's EmPOWER program jeopardizes the utilization of such funds. More specifically, the language in Public Utilities Article 7-224(b) and (h) under the bill would, ostensibly, count as supplantation of State funds with federal funds. The agencies advise that the intent of the relevant available federal funding is for states to expand existing programs, including ratepayer-funded programs, or to create new programs – *not to supplant or replace existing funding*.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: SB 905 (Senator Feldman) - Education, Energy, and the Environment.

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

Fiscal Note History: First Reader - February 28, 2023
js/lgc Third Reader - April 7, 2023
Revised - Amendment(s) - April 7, 2023

Analysis by: Stephen M. Ross

Direct Inquiries to:
(410) 946-5510
(301) 970-5510