

Department of Legislative Services  
Maryland General Assembly  
2011 Session

FISCAL AND POLICY NOTE

House Bill 116 (Delegate Beitzel)  
Economic Matters

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Garrett County - County Commissioners - Commercial Wind Turbines

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This bill authorizes the Garrett County Commissioners to enact ordinances regulating the setback of a commercial wind turbine structure and establishing a fee for decommissioning of such structures.

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Fiscal Summary

**State Effect:** None.

**Local Effect:** None. Garrett County can enact specified ordinances with existing resources.

**Small Business Effect:** Minimal.

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Analysis

**Current Law:** Generally, counties have authority to specifically restrict or authorize the construction of wind-power generating facilities through local zoning rule, regulation, law, or ordinance. Garrett County has the authority to adopt countywide zoning but the county has not adopted an implementing ordinance and a comprehensive plan, as is required to exercise this authority. As a result, Garrett County does not have authority to implement zoning restrictions for a single commercial use.

If a commercial wind-powered generating facility is granted a certificate of public convenience and necessity (CPCN) by the Public Service Commission (PSC) the generating facility may be constructed without regard to local zoning rule, regulation, law, or ordinances. When considering an application for a CPCN, PSC may require an

applicant to provide for decommissioning of the facility as a condition of approval. In past cases this has included establishing a bond or financial instrument to ensure that the facility can be returned to a state comparable to the condition of the land prior to construction.

Wind-power generating facilities with a capacity over 70 megawatts must obtain a CPCN prior to construction. Wind-power generating facilities with a capacity under 70 megawatts may apply for a CPCN or may request an exemption from CPCN requirements. PSC must grant an exemption from CPCN requirements as long as certain conditions are met: (1) the wind-powered facility is land-based; (2) the generating capacity is 70 megawatts or less; (3) the excess electricity is sold on the wholesale market pursuant to an interconnection, operation, and maintenance agreement with the local electric company; and (4) PSC provides an opportunity for public comment at a public hearing. If a generating facility is granted an exemption from the CPCN requirement, PSC evaluation is limited to ensuring safety and reliability of the electric system. All issues other than safety and reliability of the electric system are left up to other State and local agencies.

State law does not provide specifically for the decommissioning of electric generation facilities. The requirements for decommissioning a nuclear power plant are set out in U.S. Nuclear Regulatory Commission regulations (Title 10 of the Code of Federal Regulations, part 20 subpart E, and parts 50.75, 50.82, 51.53, and 51.95).

## **Background:**

### *Commercial Wind Facilities and the CPCN Process*

In 2010 the Criterion and Roth Rock commercial wind facilities completed construction and began testing equipment. Both of these facilities submitted an application to PSC seeking an exemption from the CPCN requirement and were granted that exemption prior to construction. **Exhibit 1** shows these facilities and other facilities that have been proposed. Development of proposed wind-generating stations located in Allegany County has been suspended due to a county ordinance restricting commercial wind turbines.

As noted above, wind facilities with less than 70 megawatts may apply for a CPCN or may request an exemption from CPCN requirements. If PSC grants an exemption from CPCN requirements, local zoning ordinances may restrict wind development. If a facility is granted a CPCN, wind facilities may be constructed as licensed.

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**Exhibit 1**  
**Completed and Proposed Wind Power Projects in Maryland**

<u>Project</u>	<u>Developer</u>	<u>Proposed Size (MW)</u>	<u>County</u>	<u>PSC Case Number</u>	<u>Status</u>
Criterion	Constellation	70	Garrett	8938	Construction completed
Savage Mountain	U.S. Windforce	40	Garrett & Allegany	8939	CPCN Expired
Roth Rock	Synergics	50	Garrett	9191	Construction completed
Dans Mountain	U.S. Windforce	70	Allegany	9164	Project on hold

MW: megawatts

Source: Maryland Power Plant Research Program, Public Service Commission, Department of Legislative Services

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The licensing of new electric power plants in Maryland is a comprehensive two-part process involving PSC and several other State agencies, *e.g.*, the Department of Natural Resources and the Maryland Department of the Environment. PSC is the lead agency for licensing the siting, construction, and operation of power plants in the State.

During the CPCN application process, the agencies hold extensive discussions with interested parties such as local governments, environmental organizations, the company proposing to build the power plant, and individual citizens. Concerns are identified and the State agencies incorporate those concerns into their evaluation.

Prior to a CPCN being issued for a proposed power plant, the State agencies provide PSC the results of their evaluation and a consolidated set of recommendations as to whether the proposed site is suitable and whether the proposed power plant can be constructed and operated in an acceptable manner. The agencies also provide detailed recommendations on conditions that should be attached to the CPCN. These conditions can relate, for example, to minimizing impacts to air, surface and groundwater, aquatic and terrestrial resources, cultural and historic resources, noise, and land use.

*Small Wind Generation and Local Ordinance*

Local zoning restrictions for wind turbines vary by jurisdiction. The Maryland Energy Administration provides a model zoning ordinance for small wind energy systems (less than 100 kilowatts), which has been adopted by some counties and municipalities.

As shown in **Exhibit 2**, 14 counties (Allegany, Anne Arundel, Calvert, Caroline, Carroll, Dorchester, Frederick, Harford, Howard, St. Mary's, Talbot, Washington, Wicomico, and Worcester) have adopted local ordinances for small wind generation.

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### **Exhibit 2 Small Wind Zoning Ordinance Status**



Source: Maryland Energy Administration, Status as of November 22, 2010.

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### *Decommissioning Costs*

When the owner of a generating facility decides to close that facility permanently, the facility must be decommissioned by safely removing it from service and returning the site to its original condition. The cost of decommissioning a generating facility varies greatly depending on the type of the facility and the characteristics of the site location. An electric generating facility may contain a series of related physical structures which would need to be removed during decommissioning. An electric generating facility may also have the potential for pollution remediation due to soil or water contamination at the site. Decommissioning may also include restoring vegetation on the site to its pre-operating condition.

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### **Additional Information**

**Prior Introductions:** HB 390 of 2010 received an unfavorable report from the House Economic Matters Committee. Its cross file, SB 301, received a hearing in the Senate  
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Finance Committee, but no further action was taken. SB 584/HB 604 of 2009 received unfavorable reports from the Senate Finance Committee and the House Economic Matters Committee, respectively.

**Cross File:** SB 252 (Senator Edwards) - Finance.

**Information Source(s):** Garrett County, Maryland Energy Administration, Public Service Commission, Department of Legislative Services

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ncs/lgc

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Analysis by: Erik P. Timme

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