

SENATE BILL 563

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CF HB 554

By: **Senator Simonaire**

Introduced and read first time: February 1, 2013

Assigned to: Education, Health, and Environmental Affairs

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 11, 2013

CHAPTER _____

1 AN ACT concerning

2 **Environment – ~~Permit Applications – Notice – Neighboring Jurisdictions and~~**
3 **Public Utilities – Notice to Neighboring Jurisdictions of Applications**

4 FOR the purpose of requiring the Department of the Environment, on receipt of a
5 certain permit application, to give notice immediately or require the applicant
6 to give notice immediately of the application by certified mail to the governing
7 bodies of certain counties and municipal corporations and to certain members of
8 the General Assembly; requiring an applicant for a certain incinerator or
9 landfill system to give notice by certified mail of the application, informational
10 meeting, and hearings to the governing bodies of certain counties and municipal
11 corporations and to certain members of the General Assembly; requiring the
12 Public Service Commission, on receipt of an application for a certificate of public
13 convenience and necessity to construct a certain generating station, overhead
14 transmission line, or qualified generator lead line, to provide notice immediately
15 or require the applicant to provide notice immediately of the application to the
16 governing bodies of certain counties and municipal corporations and to certain
17 members of the General Assembly; requiring the Commission, on receipt of a
18 certain application for approval to construct a certain generating station, to
19 provide notice immediately or require the applicant to provide notice
20 immediately of the application to the governing bodies of certain counties and
21 municipal corporations and to certain members of the General Assembly;
22 exempting a certain notice requirement from a certain waiver authorization;
23 requiring the Commission, on receipt of a certain application and certain
24 additional information relating to the construction of a certain generating
25 station and associated overhead transmission lines, to provide notice

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



immediately or require the applicant to provide notice immediately to the governing bodies of certain counties and municipal corporations and to certain members of the General Assembly; and generally relating to notice requirements for ~~environmental permit~~ applications to the Department of the Environment and the Public Service Commission.

BY repealing and reenacting, without amendments,
 Article – Environment
 Section 1–602
 Annotated Code of Maryland
 (2007 Replacement Volume and 2012 Supplement)

BY repealing and reenacting, with amendments,
 Article – Environment
 Section 2–404 and 9–209
 Annotated Code of Maryland
 (2007 Replacement Volume and 2012 Supplement)

BY repealing and reenacting, with amendments,
Article – Public Utilities
Section 7–207(c), 7–207.1, and 7–208(d)
Annotated Code of Maryland
(2010 Replacement Volume and 2012 Supplement)

BY repealing and reenacting, without amendments,
Article – Public Utilities
Section 7–208(a) through (c)
Annotated Code of Maryland
(2010 Replacement Volume and 2012 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Environment

1–602.

(a) Wherever this subtitle requires the Department to publish notice:

(1) Notice shall be published at least once a week for 2 consecutive weeks in a daily or weekly newspaper of general circulation in the geographical area in which the proposed facility is located;

(2) The Department may require notice of an informational meeting or a public hearing by mail to each person requesting the meeting or hearing or to their authorized representatives;

1 (3) The Department may provide additional notice by requiring the
2 notice to be posted at the proposed facility or at public facilities in the geographical
3 area of the proposed facility; and

4 (4) The applicant shall bear all costs incurred by the Department in
5 providing notice.

6 (b) (1) In addition to the requirements set forth in subsection (a) of this
7 section and notwithstanding any other requirements in this article, wherever this
8 subtitle requires the Department to publish notice of an application for a permit, the
9 Department shall:

10 (i) Electronically post the notice of an application for a permit
11 on the Department's website; and

12 (ii) Provide a method for interested persons to electronically
13 request any additional notices related to an application for a permit.

14 (2) The notice required under paragraph (1) of this subsection shall
15 include:

16 (i) The name and address of the applicant;

17 (ii) A description of the location and the nature of the activity
18 for which the permit has been sought;

19 (iii) A reference to the applicable statutes or regulations
20 governing the application process;

21 (iv) The time and place of any scheduled informational meeting
22 or public hearing, or a description of where this information can be found;

23 (v) A description of where further information about the permit
24 application can be found; and

25 (vi) Any other information that the Department determines is
26 necessary.

27 (c) The Department may require the applicant to publish and send the
28 notices required in subsection (a) of this section.

29 2-404.

30 (a) This section applies to the following activities:

31 (1) Construction of a new source;

1 (2) Replacement of components of an existing permitted source, if the
2 fixed capital cost of the replacement components exceeds one-half of the fixed capital
3 cost that would be required to construct a new source comparable in process to the
4 existing source; and

5 (3) Modification of an existing permitted source by making a physical
6 or operational change to the source that will result in a significant net increase in
7 emissions of any pollutant from that source.

8 (b) (1) Before accepting an application for a permit subject to subsection
9 (c) of this section, the Department shall require the applicant to submit
10 documentation:

11 (i) That demonstrates that the proposal has been approved by
12 the local jurisdiction for all zoning and land use requirements; or

13 (ii) That the source meets all applicable zoning and land use
14 requirements.

15 (2) Paragraph (1) of this subsection does not apply to any application
16 for a permit to construct at an existing source unless the existing source is a
17 nonconforming use.

18 (c) The Department shall comply with the provisions in subsection (d) of this
19 section before issuing a permit for the activities listed in subsection (a) of this section
20 at:

21 (1) Any source which is required to obtain a permit to operate under
22 regulations adopted under this subtitle;

23 (2) Any source which is subject to federal standards under 40 C.F.R.
24 Part 60 (New Source Performance Standards), 40 C.F.R. Part 61 (National Emission
25 Standards for Hazardous Air Pollutants), or 40 C.F.R. 52.21 (Prevention of Significant
26 Deterioration); or

27 (3) Any source that will, after control, discharge 25 tons or more per
28 year of a pollutant regulated under this title in the areas of Baltimore City designated
29 by the United States Post Office as zip code numbers 21225, 21226, and 21230.

30 (d) **(1) ON RECEIPT OF AN APPLICATION FOR A PERMIT SUBJECT TO**
31 **SUBSECTION (C) OF THIS SECTION, THE DEPARTMENT SHALL GIVE NOTICE**
32 **IMMEDIATELY OR REQUIRE THE APPLICANT TO GIVE NOTICE IMMEDIATELY OF**
33 **THE APPLICATION BY CERTIFIED MAIL TO:**

1 **(I) THE GOVERNING BODY OF EACH COUNTY OR**
2 **MUNICIPAL CORPORATION IN WHICH ANY PORTION OF THE SOURCE IS LOCATED**
3 **OR IS PROPOSED TO BE LOCATED;**

4 **(II) THE GOVERNING BODY OF EACH COUNTY OR**
5 **MUNICIPAL CORPORATION WITHIN ONE MILE OF THE PROPERTY LINE OF THE**
6 **SOURCE OR THE PROPOSED LOCATION OF THE SOURCE;**

7 **(III) EACH MEMBER OF THE GENERAL ASSEMBLY**
8 **REPRESENTING ANY PART OF A COUNTY IN WHICH ANY PORTION OF THE**
9 **SOURCE IS LOCATED OR PROPOSED TO BE LOCATED; AND**

10 **(IV) EACH MEMBER OF THE GENERAL ASSEMBLY**
11 **REPRESENTING ANY PART OF EACH COUNTY WITHIN ONE MILE OF THE**
12 **PROPERTY LINE OF THE SOURCE OR THE PROPOSED LOCATION OF THE SOURCE.**

13 **[(1)] (2) [Before] IN ADDITION TO THE REQUIREMENTS UNDER**
14 **PARAGRAPH (1) OF THIS SUBSECTION, BEFORE** issuing a permit subject to
15 subsection (c) of this section, the Department shall:

16 (i) Comply with the provisions of Title 1, Subtitle 6 of this
17 article; and

18 (ii) Conduct any public hearing required by Title 1, Subtitle 6 of
19 this article in the county in which the proposed source is located.

20 **[(2)] (3)** In addition to the requirements under **[paragraph (1)]**
21 **PARAGRAPHS (1) AND (2)** of this subsection, before issuing a permit to construct a
22 source described in subsection (c)(3) of this section, the Department shall require at
23 the expense of the applicant the preparation of an ambient air quality impact analysis
24 regarding the proposed construction.

25 (e) The provisions of this section do not apply to any permit to construct
26 control equipment on an existing source or to any permit to operate.

27 9–209.

28 (a) The applicant shall give notice of the application, the informational
29 meeting, and hearings:

30 (1) To the public in compliance with Title 1, Subtitle 6 of this article;

31 (2) **[To] BY CERTIFIED MAIL TO** the board of county commissioners
32 or the county council of any county and the chief executive of any county or municipal
33 corporation that the Department determines may be affected by the incinerator for

1 public use or landfill system, [by certified mail] INCLUDING ANY COUNTY OR
 2 MUNICIPAL CORPORATION WITHIN ONE MILE OF THE PROPERTY LINE OF THE
 3 PROPOSED INCINERATOR FOR PUBLIC USE OR LANDFILL SYSTEM;

4 (3) To the Department of Natural Resources, by certified mail;

5 (4) [To] BY CERTIFIED MAIL TO each member of the General
 6 Assembly representing any part of [a]:

7 (I) A county in which the landfill system or incinerator FOR
 8 PUBLIC USE is located[, by certified mail]; OR

9 (II) A COUNTY WITHIN 1 MILE OF THE PROPERTY LINE OF
 10 THE PROPOSED LANDFILL SYSTEM OR INCINERATOR FOR PUBLIC USE;

11 (5) To record owners of real property within 1,000 feet of the property
 12 line of the proposed incinerator for public use or landfill system, by certified mail to
 13 the addresses of record owners as indicated in the records of the State Department of
 14 Assessments and Taxation; and

15 (6) By posting a notice of the application, the informational meeting,
 16 and hearings in a conspicuous space on the site of the proposed incinerator for public
 17 use or landfill system.

18 (b) The local officials notified under subsection (a)(2) of this section shall give
 19 notice of the application, the informational meeting, and hearings to all interested
 20 agencies of their respective jurisdictions.

21 (c) To the extent practicable, the Department and other units of the State
 22 government shall consolidate the informational meeting and hearings concerning
 23 permits for the same landfill system or incinerator for public use.

24 **Article – Public Utilities**

25 7–207.

26 (c) (1) On receipt of an application for a certificate of public convenience
 27 and necessity under this section, the Commission shall provide notice IMMEDIATELY
 28 OR REQUIRE THE APPLICANT TO PROVIDE NOTICE IMMEDIATELY OF THE
 29 APPLICATION to:

30 (I) the Department of Planning;

31 (II) THE GOVERNING BODY OF EACH COUNTY OR MUNICIPAL
 32 CORPORATION IN WHICH ANY PORTION OF THE GENERATING STATION,

1 OVERHEAD TRANSMISSION LINE, OR QUALIFIED GENERATOR LEAD LINE IS
2 PROPOSED TO BE CONSTRUCTED;

3 (III) THE GOVERNING BODY OF EACH COUNTY OR MUNICIPAL
4 CORPORATION WITHIN 1 MILE OF THE PROPOSED LOCATION OF THE
5 GENERATING STATION, OVERHEAD TRANSMISSION LINE, OR QUALIFIED
6 GENERATOR LEAD LINE;

7 (IV) EACH MEMBER OF THE GENERAL ASSEMBLY
8 REPRESENTING ANY PART OF A COUNTY IN WHICH ANY PORTION OF THE
9 GENERATING STATION, OVERHEAD TRANSMISSION LINE, OR QUALIFIED
10 GENERATOR LEAD LINE IS PROPOSED TO BE CONSTRUCTED;

11 (V) EACH MEMBER OF THE GENERAL ASSEMBLY
12 REPRESENTING ANY PART OF EACH COUNTY WITHIN 1 MILE OF THE PROPOSED
13 LOCATION OF THE GENERATING STATION, OVERHEAD TRANSMISSION LINE, OR
14 QUALIFIED GENERATOR LEAD LINE; and [to]

15 (VI) all other interested persons.

16 (2) The Department of Planning shall forward the application to each
17 appropriate State unit and unit of local government for review, evaluation, and
18 comment regarding the significance of the proposal to State, area-wide, and local
19 plans or programs.

20 7-207.1.

21 (a) This section applies to a person who:

22 (1) constructs a generating station:

23 (i) designed to provide on-site generated electricity if:

24 1. the capacity of the generating station does not exceed
25 70 megawatts; and

26 2. the electricity that may be exported for sale from the
27 generating station to the electric system is sold only on the wholesale market pursuant
28 to an interconnection, operation, and maintenance agreement with the local electric
29 company; or

30 (ii) that produces electricity from wind if:

31 1. the generating station is land-based;

1 2. the capacity of the generating station does not exceed
2 70 megawatts;

3 3. the electricity that may be exported for sale from the
4 generating station to the electric system is sold only on the wholesale market pursuant
5 to an interconnection, operation, and maintenance agreement with the local electric
6 company;

7 4. the Commission provides an opportunity for public
8 comment at a public hearing as provided in subsection [(e)] (F) of this section; and

9 5. the generating station's wind turbines are not located
10 within a distance from the Patuxent River Naval Air Station that is determined by
11 regulations adopted by the Commission in coordination with the Commander, Naval
12 Air Warfare Center Aircraft Division, provided that the distance requirement under
13 the regulation is:

14 A. not greater than is necessary to encompass an area in
15 which utility scale wind turbines could create Doppler radar interference for missions
16 at the Patuxent River Naval Air Station;

17 B. not greater than 46 miles, measured from location
18 38.29667N, 76.37668W; and

19 C. subject to modification if necessary to reflect changes
20 in missions or technology at the Patuxent River Naval Air Station or changes in wind
21 energy technology; or

22 (2) constructs a generating station if:

23 (i) the capacity of the generating station does not exceed 25
24 megawatts;

25 (ii) the electricity that may be exported for sale from the
26 generating station to the electric system is sold only on the wholesale market pursuant
27 to an interconnection, operation, and maintenance agreement with the local electric
28 company; and

29 (iii) at least 10% of the electricity generated at the generating
30 station each year is consumed on-site.

31 (b) (1) The Commission shall require a person that is exempted from the
32 requirement to obtain a certificate of public convenience and necessity to obtain
33 approval from the Commission under this section before the person may construct a
34 generating station described in subsection (a) of this section.

35 (2) An application for approval under this section shall:

1 (i) be made to the Commission in writing on a form adopted by
2 the Commission;

3 (ii) be verified by oath or affirmation; and

4 (iii) contain information that the Commission requires,
5 including:

6 1. proof of compliance with all applicable requirements
7 of the independent system operator; and

8 2. a copy of an interconnection, operation, and
9 maintenance agreement between the generating station and the local electric
10 company.

11 **(C) ON RECEIPT OF AN APPLICATION FOR APPROVAL UNDER THIS**
12 **SECTION, THE COMMISSION SHALL PROVIDE NOTICE IMMEDIATELY OR**
13 **REQUIRE THE APPLICANT TO PROVIDE NOTICE IMMEDIATELY OF THE**
14 **APPLICATION TO:**

15 **(1) THE GOVERNING BODY OF EACH COUNTY OR MUNICIPAL**
16 **CORPORATION IN WHICH ANY PORTION OF THE GENERATING STATION IS**
17 **PROPOSED TO BE CONSTRUCTED;**

18 **(2) THE GOVERNING BODY OF EACH COUNTY OR MUNICIPAL**
19 **CORPORATION WITHIN 1 MILE OF THE PROPOSED LOCATION OF THE**
20 **GENERATING STATION;**

21 **(3) EACH MEMBER OF THE GENERAL ASSEMBLY REPRESENTING**
22 **ANY PART OF A COUNTY IN WHICH ANY PORTION OF THE GENERATING STATION**
23 **IS PROPOSED TO BE CONSTRUCTED; AND**

24 **(4) EACH MEMBER OF THE GENERAL ASSEMBLY REPRESENTING**
25 **ANY PART OF EACH COUNTY WITHIN 1 MILE OF THE PROPOSED LOCATION OF**
26 **THE GENERATING STATION.**

27 **[(c)] (D) When reviewing an application for approval under this section, the**
28 **Commission shall:**

29 (1) ensure the safety and reliability of the electric system;

30 (2) require the person constructing the generating station to notify the
31 Commission 2 weeks before the first export of electricity from a generating station
32 approved under this section; and

1 (3) conduct its review and approval in an expeditious manner.

2 [(d)] (E) [The] EXCEPT FOR THE NOTICE REQUIRED UNDER
3 SUBSECTION (C) OF THIS SECTION, THE Commission may waive an element of the
4 approval process under this section if the Commission determines that the waiver is in
5 the public interest.

6 [(e)] (F) (1) The Commission shall provide an opportunity for public
7 comment and hold a public hearing as provided under this subsection on an
8 application for approval made under subsection (a)(1)(ii) of this section in each county
9 and municipal corporation in which any portion of the construction of a generating
10 station is proposed to be located.

11 (2) Upon the request of the governing body of a county or municipal
12 corporation in which any portion of the construction of a generating station is proposed
13 to be located, the Commission shall hold the public hearing jointly with the governing
14 body.

15 (3) Once in each of 2 successive weeks immediately before the hearing
16 date, the Commission, at the expense of the applicant, shall provide weekly notice of
17 the public hearing and opportunity for public comment by advertisement in a
18 newspaper of general circulation in the county or municipal corporation affected by the
19 application.

20 7-208.

21 (a) This section applies to any person:

22 (1) constructing a generating station and its associated overhead
23 transmission lines designed to carry a voltage in excess of 69,000 volts; or

24 (2) exercising the right of condemnation in connection with the
25 construction.

26 (b) (1) To obtain the certificate of public convenience and necessity
27 required under § 7-207 of this subtitle for construction under this section, a person
28 shall file an application with the Commission at least 2 years before construction of
29 the facility will commence.

30 (2) The Commission may waive the 2-year requirement on a showing
31 of good cause.

32 (c) The applicant shall:

33 (1) include in an application under this section the information that
34 the Commission requests initially; and

1 (2) furnish any additional information that the Commission requests
2 subsequently.

3 (d) (1) On the receipt of an application under this section, together with
4 any additional information requested under subsection (c)(2) of this section, the
5 Commission shall provide notice to:

6 (i) all interested persons;

7 (ii) the Department of Agriculture;

8 (iii) the Department of Business and Economic Development;

9 (iv) the Department of the Environment;

10 (v) the Department of Natural Resources;

11 (vi) the Department of Transportation; and

12 (vii) the Department of Planning.

13 (2) **ON RECEIPT OF AN APPLICATION UNDER THIS SECTION, AND**
14 **WHENEVER ADDITIONAL INFORMATION IS RECEIVED UNDER SUBSECTION (C)(2)**
15 **OF THIS SECTION, THE COMMISSION SHALL PROVIDE NOTICE IMMEDIATELY OR**
16 **REQUIRE THE APPLICANT TO PROVIDE NOTICE IMMEDIATELY TO:**

17 **(I) THE GOVERNING BODY OF EACH COUNTY OR MUNICIPAL**
18 **CORPORATION IN WHICH ANY PORTION OF THE GENERATING STATION OR THE**
19 **ASSOCIATED OVERHEAD TRANSMISSION LINES IS PROPOSED TO BE**
20 **CONSTRUCTED;**

21 **(II) THE GOVERNING BODY OF EACH COUNTY OR MUNICIPAL**
22 **CORPORATION WITHIN 1 MILE OF THE PROPOSED LOCATION OF THE**
23 **GENERATING STATION OR THE ASSOCIATED OVERHEAD TRANSMISSION LINES;**

24 **(III) EACH MEMBER OF THE GENERAL ASSEMBLY**
25 **REPRESENTING ANY PART OF A COUNTY IN WHICH ANY PORTION OF THE**
26 **GENERATING STATION OR THE ASSOCIATED OVERHEAD TRANSMISSION LINES IS**
27 **PROPOSED TO BE CONSTRUCTED; AND**

28 **(IV) EACH MEMBER OF THE GENERAL ASSEMBLY**
29 **REPRESENTING ANY PART OF EACH COUNTY WITHIN 1 MILE OF THE PROPOSED**
30 **LOCATION OF THE GENERATING STATION OR THE ASSOCIATED OVERHEAD**
31 **TRANSMISSION LINES.**

1 [(2)](3) The Commission shall hold a public hearing on the
 2 application as required by § 7-207 of this subtitle, after:

3 (i) the receipt of any additional information requested under
 4 subsection (c)(2) of this section that the Commission considers necessary; and

5 (ii) any publication of notice the Commission considers to be
 6 proper.

7 [(3)](4) (i) At the public hearing, the Commission shall ensure
 8 presentation of the information and recommendation of the State units specified in
 9 paragraph (1) of this subsection and shall allow the official representative of each unit
 10 to sit during hearing of all parties.

11 (ii) Based on the evidence relating to the unit's areas of concern,
 12 the Commission shall allow each unit 15 days after the conclusion of the hearing to
 13 modify or affirm the unit's initial recommendations.

14 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
 15 October 1, 2013.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.