

# HOUSE BILL 1168

C5, C8

4lr2098

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By: **Southern Maryland Delegation**

Introduced and read first time: February 7, 2014

Assigned to: Economic Matters

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 12, 2014

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Electricity – Certificate – Wind Turbines – Limitation**

3 FOR the purpose of prohibiting the Public Service Commission from granting final  
4 approval for, and a person from undertaking, construction of a certain  
5 wind-powered generating station above certain heights within ~~a certain area~~  
6 areas before a certain date; requiring the Commission to consider certain  
7 information when evaluating a proposal for a certificate of public convenience  
8 and necessity for certain facilities; altering the scope of a certain exception to  
9 the requirement to obtain a certificate of public convenience and necessity  
10 under certain circumstances; providing for the termination of this Act; defining  
11 a certain term; providing for the application of this Act; and generally relating  
12 to wind turbines and certificates of public convenience and necessity.

13 BY repealing and reenacting, with amendments,  
14 Article – Public Utilities  
15 Section 7-207 and 7-207.1(a)(1)(ii)  
16 Annotated Code of Maryland  
17 (2010 Replacement Volume and 2013 Supplement)

18 ~~BY repealing and reenacting, without amendments,~~  
19 ~~Article – Public Utilities~~  
20 ~~Section 7-207.1(a)(1)(ii)~~  
21 ~~Annotated Code of Maryland~~  
22 ~~(2010 Replacement Volume and 2013 Supplement)~~

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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.



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

3 **Article – Public Utilities**

4 7–207.

5 (a) (1) (i) In this section and § 7–208 of this subtitle, “construction”  
6 means:

7 1. any physical change at a site, including fabrication,  
8 erection, installation, or demolition; or

9 2. the entry into a binding agreement or contractual  
10 obligation to purchase equipment exclusively for use in construction in the State or to  
11 undertake a program of actual construction in the State which cannot be canceled or  
12 modified without substantial loss to the owner or operator of the proposed generating  
13 station.

14 (ii) “Construction” does not include a change that is needed for  
15 the temporary use of a site or route for nonutility purposes or for use in securing  
16 geological data, including any boring that is necessary to ascertain foundation  
17 conditions.

18 (2) In this section, “qualified generator lead line” means an overhead  
19 transmission line that is designed to carry a voltage in excess of 69,000 volts and  
20 would allow an out-of-state Tier 1 or Tier 2 renewable source to interconnect with a  
21 portion of the electric system in Maryland that is owned by an electric company.

22 (b) (1) (i) Unless a certificate of public convenience and necessity for  
23 the construction is first obtained from the Commission, a person may not begin  
24 construction in the State of:

25 1. a generating station; or

26 2. a qualified generator lead line.

27 (ii) If a person obtains Commission approval for construction  
28 under § 7–207.1 of this subtitle, the Commission shall exempt a person from the  
29 requirement to obtain a certificate of public convenience and necessity under this  
30 section.

31 (iii) Notwithstanding subparagraph (i) of this paragraph, a  
32 person may not apply to obtain a certificate of public convenience and necessity for  
33 construction of a qualified generator lead line unless:

1                   1.     at least 90 days before the filing of an application for  
2 a certificate of public convenience and necessity, the person had in good faith offered  
3 the electric company that owns that portion of the electric grid in Maryland to which  
4 the qualified generator lead line would interconnect a full and fair opportunity for the  
5 electric company to construct the qualified generator lead line; and

6                   2.     at any time at least 10 days before the filing of an  
7 application for a certificate of public convenience and necessity, the electric company:

8                   A.     did not accept from the person a proposal or a  
9 negotiated version of the proposal under which the electric company would construct  
10 the qualified generator lead line; or

11                   B.     stated in writing that the electric company did not  
12 intend to construct the qualified generator lead line.

13                   (2)    Unless a certificate of public convenience and necessity for the  
14 construction is first obtained from the Commission, and the Commission has found  
15 that the capacity is necessary to ensure a sufficient supply of electricity to customers  
16 in the State, a person may not exercise a right of condemnation in connection with the  
17 construction of a generating station.

18                   (3)    (i)    Except as provided in paragraph (4) of this subsection,  
19 unless a certificate of public convenience and necessity for the construction is first  
20 obtained from the Commission, an electric company may not begin construction of an  
21 overhead transmission line that is designed to carry a voltage in excess of 69,000 volts  
22 or exercise a right of condemnation with the construction.

23                   (ii)   For construction related to an existing overhead  
24 transmission line, the Commission may waive the requirement in subparagraph (i) of  
25 this paragraph for good cause.

26                   (4)    (i)    Except as provided in subparagraph (ii) of this paragraph,  
27 for construction related to an existing overhead transmission line designed to carry a  
28 voltage in excess of 69,000 volts, the Commission shall waive the requirement to  
29 obtain a certificate of public convenience and necessity if the Commission finds that  
30 the construction does not:

31                   1.     require the electric company to obtain new real  
32 property or additional rights-of-way through eminent domain; or

33                   2.     require larger or higher structures to accommodate:

34                   A.     increased voltage; or

35                   B.     larger conductors.

1                   (ii) 1. For construction related to an existing overhead  
2 transmission line, including repairs, that is necessary to avoid an imminent safety  
3 hazard or reliability risk, an electric company may undertake the necessary  
4 construction.

5                   2. Within 30 days after construction is completed under  
6 subsubparagraph 1 of this subparagraph, an electric company shall file a report with  
7 the Commission describing the work that was completed.

8           (c) (1) On receipt of an application for a certificate of public convenience  
9 and necessity under this section, the Commission shall provide notice immediately or  
10 require the applicant to provide notice immediately of the application to:

11                   (i) the Department of Planning;

12                   (ii) the governing body of each county or municipal corporation  
13 in which any portion of the generating station, overhead transmission line, or qualified  
14 generator lead line is proposed to be constructed;

15                   (iii) the governing body of each county or municipal corporation  
16 within 1 mile of the proposed location of the generating station, overhead transmission  
17 line, or qualified generator lead line;

18                   (iv) each member of the General Assembly representing any part  
19 of a county in which any portion of the generating station, overhead transmission line,  
20 or qualified generator lead line is proposed to be constructed;

21                   (v) each member of the General Assembly representing any part  
22 of each county within 1 mile of the proposed location of the generating station,  
23 overhead transmission line, or qualified generator lead line; and

24                   (vi) all other interested persons.

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

29           (d) (1) The Commission shall provide an opportunity for public comment  
30 and hold a public hearing on the application for a certificate of public convenience and  
31 necessity in each county and municipal corporation in which any portion of the  
32 construction of a generating station, an overhead transmission line designed to carry a  
33 voltage in excess of 69,000 volts, or a qualified generator lead line is proposed to be  
34 located.

35           (2) The Commission shall hold the public hearing jointly with the  
36 governing body of the county or municipal corporation in which any portion of the

1 construction of the generating station, overhead transmission line, or qualified  
2 generator lead line is proposed to be located, unless the governing body declines to  
3 participate in the hearing.

4 (3) Once in each of the 4 successive weeks immediately before the  
5 hearing date, the Commission shall provide weekly notice of the public hearing and an  
6 opportunity for public comment by advertisement in a newspaper of general  
7 circulation in the county or municipal corporation affected by the application.

8 (4) (i) The Commission shall ensure presentation and  
9 recommendations from each interested State unit, and shall allow representatives of  
10 each State unit to sit during hearing of all parties.

11 (ii) The Commission shall allow each State unit 15 days after  
12 the conclusion of the hearing to modify the State unit's initial recommendations.

13 (e) The Commission shall take final action on an application for a certificate  
14 of public convenience and necessity only after due consideration of:

15 (1) the recommendation of the governing body of each county or  
16 municipal corporation in which any portion of the construction of the generating  
17 station, overhead transmission line, or qualified generator lead line is proposed to be  
18 located; and

19 (2) the effect of the generating station, overhead transmission line, or  
20 qualified generator lead line on:

21 (i) the stability and reliability of the electric system;

22 (ii) economics;

23 (iii) esthetics;

24 (iv) historic sites;

25 (v) aviation safety as determined by the Maryland Aviation  
26 Administration and the administrator of the Federal Aviation Administration;

27 (vi) when applicable, air and water pollution; and

28 (vii) the availability of means for the required timely disposal of  
29 wastes produced by any generating station.

30 (f) For the construction of an overhead transmission line, in addition to the  
31 considerations listed in subsection (e) of this section, the Commission shall take final  
32 action on an application for a certificate of public convenience and necessity only after  
33 due consideration of the need to meet existing and future demand for electric service.

1 (g) (1) The Commission may not authorize, and an electric company may  
2 not undertake, the construction of an overhead transmission line that is aligned with  
3 and within 1 mile of either end of a public airport runway, unless:

4 (i) the Federal Aviation Administration determines that the  
5 construction of an overhead transmission line will not constitute a hazard to air  
6 navigation; and

7 (ii) the Maryland Aviation Administration concurs in that  
8 determination.

9 (2) A privately owned airport runway shall qualify as a public airport  
10 runway under this subsection only if the runway has been on file with the Federal  
11 Aviation Administration for at least 2 years as being open to the public without  
12 restriction.

13 (H) (1) IN THIS SUBSECTION, "REFERENCE POINT" MEANS A POINT  
14 ON THE PATUXENT NAVAL AIR STATION CENTERED AT 38.29667N AND  
15 76.37668W.

16 (2) THE COMMISSION MAY NOT APPROVE A CERTIFICATE OF  
17 PUBLIC CONVENIENCE AND NECESSITY FOR, AND A PERSON MAY NOT  
18 UNDERTAKE, CONSTRUCTION OF A WIND-POWERED GENERATING STATION  
19 THAT INCLUDES ANY WIND TURBINE EXCEEDING 50 FEET IN THE HEIGHT  
20 SPECIFIED WITHIN THE AREA DESCRIBED IN ~~§ 7-207.1(A)(1)(H)~~ PARAGRAPH  
21 (3) OF THIS ~~SUBTITLE~~ SUBSECTION BEFORE JULY 1, 2015.

22 (3) A WIND TURBINE FOR A WIND-POWERED GENERATING  
23 STATION MAY NOT EXCEED THE HEIGHT ABOVE GROUND LEVEL SPECIFIED IN  
24 THIS PARAGRAPH IN THE AREA DESCRIBED AS FOLLOWS:

25 (I) EAST OF A LINE PASSING THROUGH THE REFERENCE  
26 POINT AND 39.0986N AND 76.5284W AND:

27 1. NOT MORE THAN 24 MILES FROM THE REFERENCE  
28 POINT, 0 FEET;

29 2. MORE THAN 24 MILES AND NOT MORE THAN 30  
30 MILES FROM THE REFERENCE POINT, 100 FEET;

31 3. MORE THAN 30 MILES AND NOT MORE THAN 35  
32 MILES FROM THE REFERENCE POINT, 200 FEET;

1                   4.    MORE THAN 35 MILES AND NOT MORE THAN 39  
2 MILES FROM THE REFERENCE POINT, 300 FEET;

3                   5.    MORE THAN 39 MILES AND NOT MORE THAN 43  
4 MILES FROM THE REFERENCE POINT, 400 FEET;

5                   6.    MORE THAN 43 MILES AND NOT MORE THAN 46  
6 MILES FROM THE REFERENCE POINT, 500 FEET;

7                   7.    MORE THAN 46 MILES AND NOT MORE THAN 49  
8 MILES FROM THE REFERENCE POINT, 600 FEET; AND

9                   8.    MORE THAN 49 MILES AND NOT MORE THAN 56  
10 MILES FROM THE REFERENCE POINT, 700 FEET; AND

11                   (ii) WEST OF A LINE PASSING THROUGH THE REFERENCE  
12 POINT AND 39.0986N AND 76.5284W AND:

13                   1.    SOUTH OF 38.4428N, 0 FEET;

14                   2.    NORTH OF 38.4428N AND NO FARTHER NORTH  
15 THAN 38.5711N, 100 FEET;

16                   3.    NORTH OF 38.5711N AND NO FARTHER NORTH  
17 THAN 38.5943N, 200 FEET;

18                   4.    NORTH OF 38.5943N AND NO FARTHER NORTH  
19 THAN 38.6366N, 300 FEET;

20                   5.    NORTH OF 38.6366N AND NO FARTHER NORTH  
21 THAN 38.6596N, 400 FEET;

22                   6.    NORTH OF 38.6596N AND NO FARTHER NORTH  
23 THAN 38.6873N, 500 FEET;

24                   7.    NORTH OF 38.6873N AND NO FARTHER NORTH  
25 THAN 38.7075N, 600 FEET; AND

26                   8.    NORTH OF 38.7075N AND NOT MORE THAN 56  
27 MILES FROM THE REFERENCE POINT, 700 FEET.

28                   (2) (4)    IN EVALUATING ANY PROPOSAL FOR A WIND-POWERED  
29 GENERATING STATION WITHIN THE AREA DESCRIBED IN ~~§ 7-207.1(A)(1)(H)5~~  
30 PARAGRAPH (3) OF THIS SUBTITLE SUBSECTION, THE COMMISSION SHALL

1 REVIEW AND CONSIDER ALL AVAILABLE PERTINENT INFORMATION RELATING  
2 TO THE POTENTIAL FOR INTERFERENCE OF THE PROPOSED GENERATING  
3 STATION ON THE MAINTENANCE AND OPERATIONS OF THE ATLANTIC TEST  
4 RANGE UTILIZED BY THE PATUXENT RIVER NAVAL AIR STATION AND RELATED  
5 DEFENSE FACILITIES, BOTH AS A SPECIFIC PROPOSAL AND IN COMBINATION  
6 WITH OTHER EXISTING AND PROPOSED WIND-POWERED GENERATING STATIONS  
7 AFFECTING THE TEST RANGE.

8 7-207.1.

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

10 (1) constructs a generating station:

11 (ii) that produces electricity from wind if:

12 1. the generating station is land-based;

13 2. the capacity of the generating station does not exceed  
14 70 megawatts;

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

19 4. the Commission provides an opportunity for public  
20 comment at a public hearing as provided in subsection (f) of this section; and

21 5. the generating station's wind turbines are not located  
22 within a distance from the Patuxent River Naval Air Station AND AT A HEIGHT that  
23 ~~is~~ ARE determined by regulations adopted by the Commission in coordination with the  
24 Commander, Naval Air Warfare Center Aircraft Division, provided that the distance  
25 requirement under the regulation is:

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

29 B. SUBJECT TO § 7-207(H) OF THIS SUBTITLE, not  
30 greater than 46 miles, measured from location 38.29667N, 76.37668W; and

31 C. subject to modification if necessary to reflect changes  
32 in missions or technology at the Patuxent River Naval Air Station or changes in wind  
33 energy technology; or



1           SECTION 2. AND BE IT FURTHER ENACTED, That this Act may not be  
2 construed to affect any wind-powered generating station on which physical  
3 construction has begun on or before March 10, 2014.

4           SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
5 June 1, 2014. It shall remain effective for a period of 1 year and 1 month and, at the  
6 end of June 30, 2015, with no further action required by the General Assembly, this  
7 Act shall be abrogated and of no further force and effect.

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.